

## The trial of Reuben Crandall, M.D., charged with publishing and circulating seditious

THE TRIAL OF REUBEN CRANDALL, M.D. CHARGED WITH PUBLISHING AND CIRCULATING SEDITIOUS AND INCENDIARY PAPERS, &c. IN THE DISTRICT OF COLUMBIA, WITH THE INTENT OF EXCITING SERVILE INSURRECTION.

CAREFULLY REPORTED, AND COMPILED FROM THE WRITTEN STATEMENTS OF THE COURT AND THE COUNSEL.

BY A MEMBER OF THE BAR.

WASHINGTON CITY.

PRINTED FOR THE PROPRIETORS.

1836.

Entered according to the act of Congress, in the year 1836, in the Clerk's office of the District of Columbia.

### **NOTICE.**

The Trial of Crandall presents the first case of a man charged with endeavoring to excite insurrection among slaves and the free colored population that was ever brought before a judicial tribunal. It lasted ten days before the whole Court, and was as closely contested as any trial on record, by the counsel on both sides. Every point of law was fully and strenuously argued, and carefully considered by the Court; and where no statutes have been enacted, this case may be considered as settling the legal questions touching the rights of the slaveholding population, on the one hand, to protect themselves from foreign

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influence; and the circumstances, on the other hand, which may bring people from the nonslaveholding States into danger of the law, by having in their possession, showing, or circulating, papers and tracts which advocate the abolition of slavery in such a way as to excite slaves and free people of color to revolt and violate the existing laws and customs of the slaveholding States. No trial has ever occurred more important to travellers from the North, or to the domestic peace of the inhabitants of the Southern States.

### **THE TRIAL OF REUBEN CRANDALL, M. D. ON A CHARGE OF CIRCULATING INCENDIARY PAPERS.**

United States' Circuit Court, *District of Columbia*, Friday, April 15<sup>th</sup>, 1836.

PRESENT:

Cranch, chief justice, Thruston and Morsell, justices.

F. S. Key, district attorney, and J. M. Carlisle, for the prosecution.

R. S. Coxe and J. H. Bradley, for the defence.

John H. King, Nicholas Callan, James Kennedy, Walter Clarke, George Crandall, William Waters, Thomas Hyde, Thomas Fenwick, Samuel Lowe, George Simmes, Wesley Stevenson, and Jacob Gideon, jr., were empannelled and sworn as jurors to try the issue.

This was an indictment charging, in five counts and in various forms, the offence under the common law of libels, of publishing malicious and wicked libels, with the intent to excite sedition and insurrection among the slaves and free colored people of this District. The three first counts only having been relied upon, and no evidence having been offered under the others, an abstract, omitting the mere formal part, will be sufficient to show the nature of the libels charged.

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1st. The first count charged the defendant with publishing a libel, containing in one part thereof these words: "Then we are not to meddle with the subject of slavery in any manner; neither by appeals to the patriotism, by exhortation to humanity, by application of truth to the conscience. No; even to propose, in Congress, that the seat of our republican Government may be purified from this crying abomination, under penalty of a dissolution of the Union."

And in another part thereof, in an article entitled "Reply to Mr. Gurley's letter, addressed to the Rev. R. R. Gurley, Secretary of the American Colonization Society, Washington city," signed by Arthur Tappan and others, the following words: "We will not insult understanding, sir, with any labored attempt to prove to you that the descents of African parents, born in this country, have as good a claim to a residence in it, as 6 the descendants of English, German, Danish, Scotch, or Irish parents. You will not attempt to prove that every native colored person you meet in the streets, has not the same right to remain in this his native land, that you and we have. Assuming this as an incontrovertable truth, we hold it self-evident that they have as good right to deport us to Europe, under the pretext that there we shall be prosperous and happy, as we have to deport them to Africa on a similar plea."

And in another part thereof, in the said reply, the following words: "In what language could the unrighteous principles of denying freedom to colored people in this country, (which amounts to the same thing as demanding the expulsion of those already free,) be more effectually and yet more plausibly inculcated than in those very words of Gen. Harper you have, with so much approbation, quoted to us."

And in another part thereof, in the said reply, the following words: "Against this doctrine of suspending emancipation upon the contingency or condition of expatriation we feel bound to protest; because we believe that every man has a right to reside in his native country if he chooses, and that every man's native country is the country in which he was born—that no man's right to freedom is suspended upon, or taken away by his desire to remain in his

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native country—that to make a removal from one's own native country a *sine qua non* of setting him free when held in involuntary bondage, is the climax of moral absurdity.”

And in another part thereof, in a certain other article, entitled “Three months' residence, or seven weeks on a sugar plantation, by Henry Whitby,” containing the most shocking and disgusting details of cruel, inhuman, and immoral treatment of slaves by the owners and overseers, and attorneys or agents of proprietors, according to the tenor and effect following—that is to say: “On this and other occasions, I thought it my duty to acquaint the attorney with my observations and feelings in regard to the cruel floggings and severe treatment generally which I have witnessed at New Ground. He admitted the facts, but said that plantation work could not be carried on without the cart-whip. He moreover labored hard to convince me that the flogging did not injure the health of the negroes. I also told him of the exceeding immorality and licentiousness which I had witnessed; mentioning, in substance, the facts previously detailed. He replied that “that was a thing which they must wink at.” “If a man in manners so much the gentleman, and in other respects so estimable, was necessarily led to countenance or wink at the enormities I have feebly attempted to describe, what, I ask, is to be expected from its subordinate administrators who are continually exposed to the demoralizing influences of slavery? what, indeed, but the frightful wickedness and cruelty which are its actual fruits?”—in contempt of the laws, to the disturbance of the public peace, to the evil example of all others, and against the peace and government of the United States.

2d. The second count charges the publication of another libel, containing among other things, in one part thereof, the following words, viz: “Our plan of emancipation is simply this—to promulgate the doctrine of human rights in high places and low places, and all places where there are human beings—to whisper it in chimney corners, and to proclaim it from the house tops, yea, from the mountain tops—to pour it out like water from the pulpit and the press—to raise it up with all the force of the inner man from infancy 7 to grey hairs

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—to give line upon line, precept upon precept, till it forms one of the foundation principles and parts indestructible of the public soul.”

And in another part thereof, the following, viz: “I (meaning the said Crandall) am not unaware that my remarks may be regarded by many as dangerous and exceptionable; that I may be regarded as a fanatic for quoting the language of eternal truth; and denounced as an incendiary for maintaining in the spirit, as well as the letter, the doctrines of American Independence. But if such are the consequences of a simple performance of duty, I shall not regard them. If my feeble appeal but reaches the hearts of any who are now slumbering in iniquity; if it shall have power given it to shake down one stone from that foul temple where the blood of human victims is offered to the moloch of slavery; if, under Providence, it can break one fetter from off the image of God, and enable one suffering African —To feel The weight of human misery less, and glide Ungroaning to the tomb— I shall not have written in vain; my conscience will be satisfied. Far be it from me to cast new bitters in the gall and wormwood waters of sectional prejudice. No, I desire peace—the peace of universal love—of catholic sympathy—the peace of common interest—a common feeling—a common humanity. But so long as slavery is tolerated, no such peace can exist. Liberty and slavery cannot dwell in harmony together. There will be a perpetual war in the members of the political *Mezentius* —between the living and the dead. God and man have placed between them an everlasting barrier—an eternal separation. No matter under what law or compact their union is attempted, the ordination of Providence has forbidden it— and it cannot stand. Peace! there can be no peace between justice and oppression—between robbery and righteousness—truth and falsehood— freedom and slavery. The slaveholding States are not free. The name of Liberty is there, but the spirit is wanting. They do not partake of its invaluable blessings.

“Wherever slavery exists to any considerable extent, with the exception of some recently settled portions of the country, and which have not yet felt, in a great degree, the baneful and deteriorating influence of slave labor—we hear, at this moment, the cry of suffering. We are told of grass-grown streets—of crumbling mansions—of beggared planters, and

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barren plantations—of fear from without—of terror within. The once fertile fields are wasted and tenantless: for the curse of slavery—the improvidence of that laborer whose hire has been kept back by fraud—has been there, poisoning the very earth, beyond the reviving influence of the early and the latter rain. A moral mildew mingles with, and blasts the economy of nature. It is as if the finger of the everlasting God had written upon the soil of the slaveholder the language of his displeasure.

“Let then the slaveholding States consult their present interest by beginning, without delay, the work of emancipation. If they fear not, and mock at the fiery indignation of Him to whom vengeance belongeth, let temporal interest persuade them. They know, they must know, that the present state of things cannot long continue. Mind is the same every where, no matter what may be the complexion of the frame which it animates; there is a love of liberty which the scourge cannot eradicate. A hatred of oppression which centuries of degradation cannot extinguish. The slave will become conscious, sooner or later, of his strength—his physical superiority—and will exert it. His torch will be at the threshold, and his knife at the throat of the planter. Horrible and indiscriminate will be the vengeance. Where then will be the pride, the beauty, and the chivalry of the South. The smoke of her torment will rise upward, like a thick cloud, visible over the whole earth.”

3d. The third count charged the defendant with publishing twelve other libels, in which are represented and exhibited “several disgusting prints and pictures of white men in the act of inflicting, with whips, cruel and inhuman beatings and stripes upon young and helpless and unresisting black children; and inflicting with other instruments, cruel and inhuman violence upon slaves, and in a manner not fit and proper to be seen and represented; calculated and intended to excite the good people of the United States in said county to violence against the holder of slaves in said county as aforesaid, and calculated and intended to excite the said slaves in said county, to violence and rebellion against their said masters in said county; in contempt of the laws, to the disturbance of the public peace, to the evil example of all others, and against the peace and government of the United States.”

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All these counts contained averments that at the time of the publication of these libels, the citizens of the United States residing in the county of Washington, in the District of Columbia, were lawfully authorized to hold slaves as property, and many of them did so hold them—and that many free persons of color also reside in the District; and that the defendant, unlawfully, maliciously, and seditiously, contriving and intending to traduce, vilify, and bring into hatred and contempt, among the citizens of the United States. the laws and government of the United States in the county of Washington as duly established and in force, and to inflame and excite the people of the United States to resist and oppose and disregard the laws and Government aforesaid, and the rights of the proprietors of slaves in the said county, and to inflame and excite to violence, against the said proprietors of the said slaves, not only the ignorant and ill disposed among the free people of the United States and the free persons of color in the said county, but also the slaves; and to produce among the said slaves and free persons of color, insubordination, violence, and rebellion, and to stir up war and insurrection between the said slaves and their said masters, published the said libels, containing among other things divers false, malicious and seditious matters, of and concerning the laws and Government of the United States in the said District, and of and concerning the citizens of the United States holding slaves in the said District, and of and concerning the said slaves and free persons of color, and their labor, services, and treatment, and the state of slavery in the said District.

The defendant pleaded not guilty.

*The District Attorney* opened the case for the Government. He said this was a serious and important charge of publishing inflammatory and seditious libels, which was always an indictable offence. In this particular case, situated as the population of the District is, it was peculiarly dangerous and atrocious. In point of law, it would be necessary to prove a publication; that the prisoner did in some way or other exhibit or circulate one or 9 more of the libels; and with that view he should connect evidence that he was found with many similar libels of a most dangerous and inflammatory tendency, with the words “ *read and*

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*circulate* ” upon them, in writing which Crandall admitted to be his own handwriting; and that he gave different and contradictory accounts of how he came by them, and how they came here in his possession. Also, that similar libels were dropped into the post-office, and sent by nobody could tell whom, to almost every body in the District. After proving these facts, he said he should carry the libels before the jury, and let them judge whether the prisoner could have been here with any good motive, or have such a mass of obnoxious papers with any good purpose.

*Mr. Coxe* wished to state, at the outset, what he understood to be the law. The libels charged were not upon individuals, nor the Government, but were said to be designed to excite the whole community; and therefore publication or circulation with the intent charged, would be necessary to sustain the prosecution. Possession, however bad or dangerous the libels might be, was no crime; any man might have and keep the worst libels with entire innocence; and in this case, it would be no evidence of malicious or dangerous intent that he loaned or gave one to respectable individuals, who would not be injured and would not do any injury to others.

*Henry King* testified that about last June or July, he knew Crandall in Georgetown, where he came and took an office as a botanist, and followed that business.

*Key* handed him a pamphlet, and asked if he had seen any like it; stating, upon objection being made by *Coxe*, that his object was to show that Crandall gave the witness such a paper to read.

*Coxe* objected to the testimony, as furnishing no ground of inference that the act of publication by giving the paper to a respectable white free man, was intended to create excitement, or was the result of a malicious intent.

*Key* said he would connect this with other circumstances to show the intent. It was proper evidence to go to the jury, and they must judge what the intent really was.



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*The Court* ruled that the evidence was admissible; and,

*Henry King* went on to testify: He was in Crandall's office in Georgetown, some time in July last. Received from Dr. Crandall a pamphlet similar to the one now shown him, called the "Anti-Slavery Reporter." There was something written on it, but can't say what it was. He left it at Linthicum's store. Some one took it away from the store and it was lost.

*Judge Morsell.* Did Crandall make any remark, when you took the pamphlet?

*Witness.* No. Witness was looking at the botanical preparations in the office, and seeing this and other tracts on the subject of abolition lying about, he took up one and remarked, "the latitude is too far south for these things;" "they won't do here;" but, "by your leave, I will take this and read it over." Crandall was at the time engaged in taking out preparations of plants from a large trunk. 'There were three of these pamphlets on the table, but don't know whether they were taken from the trunk or not. Crandall used newspapers, or something like them, as wrappers for the preserved plants. Witness is not a slaveholder himself. Witness after looking over the pamphlet threw it on the desk in Linthicum's store, and afterwards I threw it under the counter. When the excitement arose, looked for it and could not find it. Had thought nothing about it till then. Did not remember what words were written on the pamphlet. Crandall did not call his attention to the tracts. He asked Crandall for the pamphlet, as a loan, and took it away with Crandall's leave. Crandall never asked for it afterwards. He saw something written on the pamphlet, and recollects that Crandall at his examination in the jail, admitted the words, "please read and circulate" to have been written by himself. He saw in Crandall's shop two or three of them, not more than three. The plants were enveloped in large newspapers. Crandall had been in Georgetown about three weeks or a month, at this time. Witness was frequently in the shop. Crandall was much engaged in gathering and preserving plants.

*Key* proposed to read from the pamphlet.

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Coxe objected that the publication, with the malicious intent charged, had not been proved, and that it was necessary before going into any other evidence to make out the fact of publication. The paper could not be read to show the intent, when no evidence of publication is offered to show such a publication as is charged; and he cited various authorities of no interest to the general reader.

Key argued that possession alone of a known published libel, was evidence of publication sufficient to call upon the defendant to show how he came by it. The intent was to be inferred from the character of the libel: and the evidence he had already given was sufficient *prima facie* evidence to put the prisoner to his defence, and allow the libel to be read to the jury. He meant to show other circumstances which would show the intent. If the evidence of having given one to a witness, and having in possession a bundle of other similar libels was not enough, then a man has only to keep them on hand, and take care not to give them away; but he may tell every body that he has them, and advertise them from one end of the country to the other; and may give them to every body who chooses to call for them, without any danger from the law.

*The Court* called King again, when he stated that Crandall permitted him to take away the pamphlet at his request, reluctantly; that it was a private office, without any sign, or indication of business, or any thing shown for sale at the windows, nor any thing for sale in the shop. The pamphlets might have been thrown down in the confusion of unpacking; and he never saw but three persons in the shop, which was usually kept locked. Crandall was mostly out collecting plants; and he once saw him describing some specimens to Mr. Cruickshank and Doctor King; he understood Crandall had given out that he was about to teach botany.

The counsel for the defence here contended, that this was not sufficient evidence of malicious publication. The delivery to King was no more than simple possession in the

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eye of the law, and was compatible with entire innocence; and possession alone was no offence.

Key cited a number of authorities to show that *prima facie* evidence of publication only, was necessary to let the libel go to the jury. Here was a publication—the jury must judge of the intent—with the handwriting of the prisoner endorsed with the words “read and circulate;” and he made the point that when a libel is printed, and a copy is found in possession of the prisoner, it is *prima facie* evidence to allow the libel to be read. To 11 prove that the words were on the libel given to King, in the prisoner's handwriting, he called

*William Robinson* , who testified, that he saw the pamphlet which King said he got of Crandall in Linthicum's shop, and that the words “read and circulate” were written on it.

*The Court* , deeming this to be *prima facie* evidence of publication, permitted the pamphlet to be read to the jury, or so much thereof as either party might think proper to be read, and pertinent to the issue.

Key was about to read the libel.

Coxe objected, that it was not the libel proved to have been given to King, for that was lost.

King was called again and said the paper he had was lost; how or where he did not know; but he identified the one handed to him as an exact copy of the same pamphlet; but said he could not say what writing was on the one he had. He might have remembered if he had not seen some with and some without writing.

*C. T. Coote* was one of the examining magistrates in the jail when Crandall was arrested. He recollected that King pointed out one with the writing on, as similar to the one he had, and that Crandall admitted the writing to be his.

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*B. K. Morsell* , another of the magistrates, recollected that King stated distinctly, that the words “read and circulate” were on the paper when he got it; and that Crandall said it was his handwriting, but he did not recollect Crandall's saying it was put on a year before.

The question was here raised and argued by the counsel on both sides, whether any evidence could be given of any libels, except those of which the publication was proved, unless they referred distinctly to the libels charged in the indictment.

*The Court* was of opinion that the United States could not give in evidence to the jury, for the purpose of proving the intent of the defendant in publishing the libel stated in the first count, any papers subsequently published by the defendant, or found in his possession unpublished by him, which would be libels, and might be substantive subjects of public prosecution, if published.

*Thruston, J.* , differed with the majority and delivered the following opinion:

There are five counts in the indictment charging, in various ways, the publishing by the traverser of sundry libels with intent to create sedition and excite insurrection among the slaves and free blacks. The first count in the indictment charges the publication of a certain libel, not otherwise described or set out in the count, than by selecting certain paragraphs in the supposed libellous pamphlet, and setting them out severally in the count. To this count only and to the libellous matter charged thereon has any evidence of publication been given. The Attorney for the United States has moved the court to be permitted to give in evidence to the jury other printed pamphlets of the same character and on the same subject, and which the traverser acknowledged to represent his sentiments, as evidence of malice on the part of the traverser in the publication of the libel in the first count; the libel in the first count being one of those which, with the 12 others now asked to be given in evidence, the traverser acknowledged contained his sentiments.

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That is, that it is competent to prove malice in the publication of one libel by others found in the possession of the traverser on the same subject, of which no proof of publication has been offered. The motion to admit the said alleged libellous pamphlets in evidence has been supported by no precedent or adjudged case, but from analogies drawn from proceedings in other cases, and from the expediency or necessity of punishing the enormous crime of which the defendant stands accused; enormous, we all admit the crime to be, if substantiated, but which judges cannot punish but under the rules and principles of law. Enormous as the offence is, it is questionable whether from public considerations it is not better that the accused should escape punishment, than that the law should be perverted to obtain his conviction.

There being no authorities cited to sustain the motion of the Attorney for the United States, we have no other guide to enlighten and direct us that the established principles and rules of law in criminal proceedings. I take it to be well settled, that in indictments for libels, publication is the gist and essence of the crime; that having in one's possession one or more seditious or libellous writings, whether written or printed, if their contents be not communicated or made known to one or more persons, then the possessor is not criminal in a legal point of view. It is true that Hawkins was cited to prove that having in one's possession a known published libel is *prima facie* evidence of publication against such possessors; admitting this authority, it seems not to touch the case before us, unless those libels were published within this District. They purport on the face of them to have been printed in *New York*, and there published, so far as sending them abroad, within that state, from the printing office, and putting them into the hands of others amounts to a publication within this District; and no evidence has been offered that the traverser ever distributed a single copy or imparted their contents to any person within this District saving the one charged in the first count. Hawkins surely did not mean that having a copy of a libel published in a foreign country in one's possession, was evidence of publication in another state or country where the possessor of such copy may be found: for example, a libel against the British government printed and published in France would be no

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publication in England, to charge a person found in England with one or more copies of such libels in his possession, with the guilt of publishing such libel against the laws of England. It is true, in times of great excitement in England, when the rebellious principles of France were gaining ground and endangering the very existence of the government, the Scottish courts did condemn and send to Botany bay, Muir and Palmer for having in their possession a printed copy of Thomas Paine's Rights of Man. It is very long since I read the case; indeed shortly after we first obtained the information of their trial, and shortly indeed after the trial; but I have never heard the judgment of the court in their case spoken of but with reprobation. I cannot remember the particulars of the case. The evidence was, that the book had been reprinted and published in Great Britain. If so, that case is stronger than that of having a printed copy in possession of a libel published only in a foreign country; and so far, if such be the fact, it is sustained by the dictum in Hawkins, but this dictum is not itself sustained, as far as I could judge from the authorities cited at the bar, from Hawkins 13 ?mself, nor by any adjudged case. I think I may boldly assert, then, that merely having in possession a libel printed and published in a foreign country only, is not an indictable offence here, and publication of the same?el here.

Let us then examine how far these alleged libels, which, although not sub??ets of criminal prosecution here, can be made use of to sustain the publication, or prove, or aid in proving, the criminal intent or malice in the publication of another libel charged in the first count, and of the publication which some evidence has been offered to the jury. Now the libels in first count, of which evidence of publication has been given to the jury, of itself libellous, or it is not; if it be libellous and published, the law ??duces the criminal intent from the libellous matter itself, and therefore requires no aid from other libellous writings to sustain it: if it be not libel??us, it cannot be made so by showing other libellous writings of the , of which he is not accused or charged in the indictment. I mean libellous matter itself in the libel is, in the eye of the law, proof of criminal??ent, if it be published, unless the traverser can rebut this inference of by proving his innocence of any criminal intent, by some sufficient excuse, as that some person stole the copy from him and

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published it without knowledge or consent. But the Attorney for the United States urged at these pamphlets, indicating the one charged in the first count, contained expressed opinions which coincided with his sentiments on the subject of them; and this was urged as a reason for admitting them in evidence. , in my view, amounts to nothing more than he appropriated to himself and adopted the thoughts of others. What proof could this appropriation or adoption afford of a malicious intent in their publication? Every man has an unquestionable right to his own moral or religious sentiments: is no crime in this: it would be criminal to restrain any man in this country in his own, or in adopting the moral or religious opinions of others, he please; it is criminal only when he attempts to propagate them, and when they have a tendency to disturb the peace of society—to invade general rights of property—and are most essentially criminal, if they have a tendency to produce the dreadful results charged in the indictment. But bad as the tendency of those writings may be, and unquestionably are, truly portrayed in the indictment, I know not how much less danger could result, if, led away by our feelings, we bend the rules and principles of law from expediency, or the supposed political necessity of convicting the accused. The present crisis may pass without leaving any dangerous consequences behind it. The good sense and virtue of the people, and the fear of punishment in transgressors, will check the progress of these alarming doctrines; but if we invade the panoply which the law has provided for protection of the accused against arbitrary or vindictive judgments, we establish precedents, the evil consequences of which cannot be calculated. The criminal intent, then, does not consist in the writing or possession of a written or printed libel, but in the publishing it. It is not easy to conceive how the criminal intent of publishing one libel, can be proved by the having possession of other libels not published, any more than you would be permitted to prove a man guilty of stealing one horse, because you might prove he had propensity to horse-stealing. But you would not be allowed to introduce such proof. The *quo animo* with which a horse is taken, is as necessary in an indictment for horse stealing, as for publishing a libel. Now, as I observed before, if the matter of the pamphlet charged in the first count in the indictment is libellous, does not the acknowledgment of the traverser that the sentiment in the several pamphlets coincided with his own, embrace in

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it the sentiments in the pamphlets charged in the first count, and of which evidence has been offered of publication? If so, does not this libel of itself afford sufficient evidence of malice, without resorting to the matter of other pamphlets not charged? Then why resort to them? The traverser was not apprised from this first count, that he was responsible for any libel or libellous matter, except what was contained in the libel set out in said count. If you are permitted in order to prove malice in publishing the libel in the first count, to read to the jury the libellous matter of other alleged libels, what will be the consequence? The matter in those other libels may be of a more aggravated or inflammatory character than in that set out in the first count. Is it not evident, if such be the case, that the jury may be influenced to convict the traverser, not by the matter of the libel with which he is charged, but from that of other libels with which he is not charged? Surely, if malice in the publication of a libel be an inference of law, that inference must be drawn only from the libel charged and published, not from other writings which are not libellous because not published. As I observed before, if the paper charged in the first count be of itself libellous, the criminal intent of publication is to be inferred from the confession of the traverser that he approved of the sentiments contained in it. If such inference can be drawn from such confession it can as well be sustained from the matter of this libel, as from that of any number of others, and there is no need to resort to them for such inference; if the matter of such papers be not libellous, no number of other libels found in the traverser's possession, however coinciding with his own opinions, can sustain the libel charged.

Again: if the matter of those pamphlets, which the Attorney for the United States has moved the court to be permitted to lay before the jury, be libellous, may not the traverser be hereafter arraigned upon them if proof shall be had of their publication? This is possible; almost probable, if his zeal in the cause be so great as has been attempted to be proved. Then might he not be convicted by their instrumentality in the present prosecution, and again in a subsequent prosecution for publishing those very libels? I thought the court had decided this point in a former opinion in this case, where they said they could not be evidence if *they were of themselves indictable writings*.



Again: if the proof of malice in the publication of the charged libel be not complete, can it be made so by the production of other pamphlets or libels not published? Is it an inference of law, that having such libels in the traverser's possession furnishes any proof of malice in the publication of the charged libel? I question the legal logic of such an argument. It was almost as easy to publish by distributing fifty pamphlets as one. Now if but one of fifty was given out, is it not as probable that he did not desire to publish them, as that he did? Now an inference from facts, or acts, is matter of law, and I should hesitate to tell the jury that the traverser having in his possession fifty other libels, or any lesser or greater number, which he might have published with the same ease as he published one, is proof of 15 malice in publishing that one. An inference to be drawn from proved facts or circumstances is something like a corollary drawn from a previously demonstrated theorem in mathematics.

I wish it was as certain and clear. An inference deduced from a proved theorem in geometry is unquestionable. Every body will agree to it. An inference drawn by law from previously proved facts or circumstances, is doubtful at best. Two discreet judges may and often do disagree in regard to it. Do we not hear every day, in this court, of the most wise and able judges—of the venerated Hale himself—admonishing courts and juries not to lend a willing ear to them; at least against circumstantial evidence, which is the same thing. How many almost irresistible cases of inferences drawn from pregnant facts have been shown, in which time proved the fallacy of such inferences, and that many an innocent man has been consigned to an ignominious death by circumstantial or (which is the same thing) inferential evidence, and still so strong were the facts and circumstances in the very cases cited by them, (where time proved the innocence of the accused who had suffered the penalty of the law), that under the same circumstances I should permit the same evidence to go to the jury—but in the case before the court those admonitions are well worth considering. We are asked to admit certain pamphlets said to be of similar libellous tendency, and proved by the confession of the traverser to coincide with his opinions, as the one charged in the indictment, and of the publication of which evidence

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has been offered to the jury, although such pamphlets were never out of the possession of the traverser nor shown to any one, to prove malice in the traverser in the publication of another pamphlet charged to have been published by him in the first count in the indictment. I do not distinctly see the legal inference of malice in having in his possession those unpublished pamphlets. He could have published them, if this malice was in his heart. Why did he not? Is it not in evidence that when he permitted one of those pamphlets to be taken from his counter and read by Mr. King, that he did it with reluctance, and that he was warned of the danger of bringing such writings so far South? Is it unreasonable to suppose that he was deterred by the warning? Taking then the whole evidence together, although it proved great indiscretion in the traverser, and great guilt had he propagated his writings—and that he would have deserved the most condign punishment had he had the temerity to have published them—yet, if I am to take the whole of the testimony in the case, I should be compelled to say, that in withholding the other pamphlets from the view of others, or of any other, he was influenced by the counsel he had received, and was afraid to publish them; and that, under the circumstances in which he permitted the first pamphlet to be taken from his counter and published, if such permission be a publication, that he then was aware of the danger he was in, and that under such circumstances the having in his possession other pamphlets of a similar character, (if the publication by permitting the pamphlets charged in the first count to be taken from his counter and read by Mr. King, be not taking the contents of the pamphlet into view of itself a malicious publication), it cannot be made so by having other pamphlets of similar tendency in his possession, which he did not publish nor attempt to publish.

It was contended, among the reasons assigned by the Attorney for the United States for the admission of those pamphlets in evidence to the jury, 16 that some three or four of them were endorsed with the words “read this and circulate,” in the handwriting of the traverser, and this was evidence of malice in the publication of the pamphlet charged in the first count, and of which evidence of the publication has been offered to the jury. But this pamphlet last spoken of had also the same words written on it: whatever evidence

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of malice may be inferred from these words, is furnished by the said pamphlet itself, and therefore it is not necessary to resort to other sources for such evidence. It is true that a multiplication of the same inscriptions on other pamphlets may, and do, manifest greater zeal, and more intense interest in the subject matter of the writings, and indicate an intention on the part of the writer of such inscriptions to publish them. The malice which the law denounces is in the publication, not in the writing or composition: a man may express his thoughts or opinions in writing with impunity, and is as innocent in the eye of the law (provided he keeps such writings or compositions locked up from the public eye) as if they were locked up in his own mind. Is not an indication or manifestation of an intention to publish certain writings or printed compositions, and the withholding the execution of such intention as strong evidence of change of purpose from fear of the consequences or for other reasons, as of malice in the publication of one of them in the way, and under the circumstances, in which the one charged to have been published in the first count was published? It is very clear, it seems to me, that if there were no other evidence of any other publication of any of the pamphlets in question, than the inscription on the corner "read this and circulate," that the indictment could not be sustained, because such inscriptions, if the pamphlets are never shown to any other person, is in the eye of the law harmless. If, then, we are asked to admit such inscriptions or pamphlets never shown to, or seen by any other person within this District, because there is evidence that one such pamphlet was permitted to be seen and partly read by another, must we not look at the evidence which proves such exhibition of such pamphlets, and connect that with such inscriptions on other pamphlets not published, to see how far such inscriptions go to fortify and strengthen the evidence of malice as to the published pamphlets? In other words, to see what legal inferences of additional evidence such inscriptions afford? If this were a case of ordinary importance, I should say without much hesitation, that they afford no such inferences. It is for the jury to draw inferences of guilt or malice from circumstances; they are fully competent to do so in the present case from the evidence now before them; but it is often and almost always a nice point for a court to instruct a jury from what circumstances or facts inferences of guilt or malice may be drawn. It is saying, Gentlemen of the jury, such

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and such a circumstance, if proved to your satisfaction, is evidence from which you may and ought to find against the traverser. It satisfies our minds and ought to satisfy yours. But juries ought and will judge for themselves in criminal cases; and I have always thought it a delicate matter in criminal cases, to give such instructions to juries. Here we are not asked to give an instruction; but we are asked to permit evidence to go the jury, which, if allowed, carries with it the opinion of the court that such evidence affords inference of malice. I must see such inference pretty clear myself, before I give my sanction to the jury to draw such inference themselves. It is true the law denounces any published writing<sup>17</sup> having a tendency to produce a breach of peace, or insurrection, or to jeopardize the general rights of property, whether the intent of the writer was wicked or innocent, as libellous. The writing itself being of a libellous character, is of itself evidence of malice in the publication, and it would be no excuse for the publisher to say, I meant no harm, I thought I was doing good. In the eye of the law he is as guilty as if his intention was really wicked. This is called implied malice, in the absence of any other proof of malice than what is offered by the internal evidence of the writing itself. Now the object of the motion to lay before the jury other libellous papers, can be for no other purpose than to prove express malice; for the published libel charged in the first count, if it contain libellous matter, and was published, is of itself sufficient proof of implied malice, and if it be not libellous, no other libellous writing can be introduced to make it so. Then, if it be libellous itself, it implies malice; and if other similar writings be introduced to prove malice, what does it amount to but proving the implied malice of one libel by the implied malice of other libels? Or, if it be said that some evidence of express malice has been laid before the jury, can you make this evidence more strong or clear by evidence of implied malice, contained in other similar writings not published? Upon the whole, I do not distinctly see, under all the circumstances of this case, how the unpublished writings can be admitted to prove the implied malice to be gathered from them if they had been published, the implied malice in the libel charged and allowed to have been published, or how such evidence of implied malice in them, can be brought to prove express malice in the publication of the charged libel in the first count. I am against the motion.

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*Mr. Key* , for the United States, then offered to prove the publication by the defendant of the libels stated in the first, second, and third counts, *by proving the following facts* , viz: that a large collection of libels, and among them several copies of those charged in those counts, with the words “ *read and circulate* ” in his handwriting, were found upon the traverser—that he undertook to account for their being in his possession, and gave untrue and contradictory accounts—that he acknowledged that he had brought here those then shown to him, being the same now in court, and that they comprehended all he brought here, except about a dozen; and that prior to the traverser's arrest sundry similar publications had been privately sent to various persons in this District by some unknown person or persons in this District.

After arguments which occupied nearly the whole of Saturday, in which the counsel on both sides displayed great learning and ingenuity,

*The Court* delivered the opinion that the Attorney for the United States may give evidence of the publication, in this District, of any copies of the libels charged in the first and second counts of the indictment. That if he shall have given any evidence tending to show such a publication here, he will be permitted to show that other copies of the same libels were found in the possession of the defendant. He may then give evidence that a certain number of papers or pamphlets were found in the possession of the defendant, together with the copies of the libels charged, and of the publication of which in this District, he shall have given evidence; but he will not be permitted to give in evidence to the jury the contents of any of the papers other than those charged as libels in this indictment, unless such other papers have 2 18 relation to the libels charged in the indictment, and would not in themselves be substantive ground of prosecution. He may then give evidence to the jury of any confessions or acknowledgments made by the defendant in relation to any of the matters charged in the indictment.

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*The District Attorney* then put in evidence as follows, to show that the prisoner had many similar libels in his possession, and that others were distributed throughout the District.

*H. B. Robertson* , constable, deposed that he found some tracts on Dr. Crandall's table at his office in Georgetown. Don't recollect how many. There were also a number of them at his lodgings, in a trunk. He denied to me that he had distributed any, but did not conceal or deny that he was in possession of them. He mentioned that he was formerly a subscriber to the *Emancipator*, but they had stopped it, and he had taken them in its place. They were sent to him from New York, and came in a box by water, and not by mail. Witness collected and brought them to the jail, tied up in a handkerchief. Being fearful of some trouble when he got into the back, he proposed to Mr. Jeffers to take Crandall to the jail through the back streets, and keep him there during the night, for fear he might be wrested from us and lynched. It was Dr. Crandall's desire to be taken out of the way of the people, and be carried to the jail. Before they left the office a crowd had collected, and they made an effort to get off as quick as possible, being very apprehensive that Dr. Crandall would suffer some harsh treatment, and serious injury from them. The event verified his expectations, for he found afterwards that the carriage was waited for somewhere on the avenue, where it was expected to pass, by a numerous and excited collection of people.

*Cross examined.* —Conversed with Dr. Crandall at his office and on the way to the jail. Went to his lodgings, and found *Emancipators* there. Did not offer to carry him before a magistrate in Georgetown. Told Dr. Crandall what my apprehensions were for his personal safety, and of being waylaid, and proposed that he should stay at the jail that night. He attempted no concealment, and gave witness free leave to search his papers, &c. Witness found Boston, New York, and Baltimore newspapers, and a great many Telegraphs. Dr. Crandall opened the trunk himself and showed the tracts. Don't remember whether they were loose, or tied together and enveloped. Those were the pamphlets now in court. Don't recollect whether the letters were brought away. There were many plants in the office. Don't know what they were put up in. Think it was pasteboard, or something like it. Asked

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him if he was Dr. Crandall, to which he replied yes. Then told him that he was charged with being an abolition agent and exhibited the warrant for his arrest. He did not then say any thing about the tracts in his possession, but when they were found he stated they were sent to him from New York, instead of the Emancipator, to which he had formerly been a subscriber. He did remark that he had not distributed any tracts of the kind.

*Question by Key* Which of the pamphlets did you find at the office, and which at the house?

Coxe objected to the question.

*Key.* I wish to know which kind were sent to Crandall in the box from New York.

*Cranch, C. J.* , saw no objection to the question.

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Witness then stated that he found the Anti-Slavery Reporters in the office. Did not recollect any others in the office, except the newspapers. The other tracts, together with some books, were found in his trunk at the house. Crandall did not say all the papers came in the box. Did not endeavor to elicit any confessions from Dr. Crandall, and, in fact, reminded him that he and Mr. Jeffers might be called on as witnesses. Witness recollected that, during the examination, there was a paper produced by Dr. Crandall, who was too much agitated to read it. One of the magistrates attempted to read it, but don't know whether it was read or not. Dr. Crandall was much agitated. There was a great excitement outside the jail, and much alarm in it. Dr. Crandall was arrested on the 10th, and examined on the 11th of August.

Witness remembers that there was a conversation in the hack, as they were coming from Georgetown to the jail, in which the following question was asked Dr. Crandall:—"Don't you think it would be rather dangerous, at the present time, to set all the negroes free?" Don't recollect the precise words of the reply, but he inferred from it—

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*The Court* interposed. We don't want your inferences, Mr. Robertson; give us the facts, if you please.

Well, if it please the Court, continued Mr. Robertson, my impression was, at the time, that Dr. Crandall's reply amounted to this—that he was for abolition, without regard to consequences. Mr. Jeffers asked the Doctor if he did not think that abolition would produce amalgamation and also endanger the security of the whites. The doctor did not object to these consequences. He thought the negroes ought to be as free as we were.

*M. Jeffers*, constable, deposed that he saw some pamphlets endorsed “please read and circulate” in Dr. Crandall's office. Witness, when he entered the office, said, “we want all your incendiary tracts, Doctor.” Witness looked into a large box and saw the pamphlets.

The box was without cover, and the pamphlets lay in a corner. At his lodgings, more pamphlets were found. Don't know how many there were in the box. Those in the trunk, at the house, were nearly all new. Dr. Crandall explained that they had stopped the *Emancipator* and sent the pamphlets in lieu of it. Think he said they were sent around in a vessel, in a box. Witness asked him what he was doing with so many of them. The reply was that he had procured them for information. Don't recollect that any of the botanical specimens were in newspapers. He said they had stopped sending papers weekly and sent them monthly. Witness asked what he was doing with so many of the same numbers at the same time, to which he replied that they all came in the box, and that he wanted them merely for information. Witness looked into, and not liking their language, remarked that he did not see how any one could derive much improvement from such stuff.

Witness recollected that there was a paper which Dr. Crandall tried to read, but was prevented from reading, by extreme agitation. Dr. Crandall rolled it up and put it in his pocket. He was much agitated, and witness thought, at the time, that he was indiscreet in so freely expressing his sentiments. No pamphlets with the endorsement “read and circulate” were found in the trunk. When Crandall was asked why he wanted so many of



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the same number of the Anti-Slavery Reporter for information, he made no reply. In the course of the conversation in the hack, Crandall said he did not intend to deny his principles. Witness asked him if colonization would not be better than abolition. He replied: No; he was in favor of immediate emancipation.

*Question by Bradley.* Did he not say, "I am for immediate preparation for emancipation." Witness did not recollect precisely. That might have been the answer. Would not say it was not. When he said he was in favor of immediate emancipation, witness remarked that it would be attended with dreadful consequences. We should all have our throats cut, and the next thing would be amalgamation.

*Thruston, J.* Would the amalgamation occur after our throats are cut, Mr. Jeffers?

*Witness.* Dr. Crandall in reply to this remark, said, "well let the law take care of all that."

*B. K. Morsell, Esq.,* one of the justices who committed the traverser, stated that, at the examination of the traverser in the jail, the witness just examined, Henry King, deposed that the pamphlet which he took from Crandall's office had written upon it the words "please to read and circulate." This deposition was made in the presence of Crandall, and Crandall did not pretend to deny it, and admitted that the words were in his own handwriting. He said that when he was about to take passage in the steamboat, at New York, there was a bundle of pamphlets brought to him. Don't recollect whether he said they were brought to him before or after he went on board of the boat. Don't remember whether Crandall said they were sent or brought to him. He stated that he was then on his way to this city. A bundle of pamphlets were brought into the jail, at the time of the examination. Crandall said that all he brought on were there, except twelve or thirteen. Crandall did not state at what time the words "please read and circulate" were written upon the pamphlets. There was no distinction drawn between those which were endorsed and those which were not. They were all thrown together. Don't recollect that Crandall made any distinction in regard to them. He was understood to speak of all the pamphlets together. The only

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contradiction in Crandall's statement was that he, at first, said that pamphlets were brought to him as he was leaving New York in the boat, and afterwards said they had been in his possession for some time. Witness looked at some of them and saw that some were of older date than others. Could not distinctly recollect which were of old and which of new date. There was a considerable interval between the dates, but don't remember how long. While the examination was going on, there was a great commotion outside of the jail, and a loud knocking at the door; the prisoner seemed agitated; which was not wonderful, considering the circumstances. Don't recollect that he said any thing about the time when the words "*please read and circulate*" were written on the pamphlets.

*Mr. Key* here admitted that he recollected hearing the prisoner say, at the examination in the jail, that the endorsements were written two years before.

*Mr. Morsell* continued. Don't remember that Crandall presented a written paper. Think it likely he did. There were three magistrates sitting, and it might have been given to one of the other two. He believed it appeared, on the examination, that Crandall had been in this District some months.

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*Clement T. Coote, Esq.*, one of the magistrates who examined the traverser in the jail, deposed that Henry King, upon his examination, stated that the words "*please read and circulate*" were written upon the pamphlet when he got it from Crandall. A bundle of the tracts were brought in. Crandall said he had received them just as he was leaving New York, on his way to this District. He was going down to the boat when they were brought to him. Crandall stated, as witness distinctly recollects, that the endorsements were made some time before. Witness did not recollect that he stated the precise time, but that he said the endorsements were made some time before. Did not recollect that he said he came on directly to Washington. After the pamphlets were shown to King and Crandall, witness's impression was that Crandall had been detained some where on the way, and in the interval had written the words. There was no contradiction that he noticed

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in Crandall's statements. Crandall admitted that the words were in his handwriting, but said they were written some time before. Crandall said they were all there except about a dozen. He did not say whether he had distributed any; but witness did not understand him to state that the number had been diminished since he came here, but that the bundle exhibited embraced all the tracts which he brought with him from New York. Witness's impression that they were all the pamphlets which witness brought to the District, except the one which he lent to King; but Crandall did not in his statement except that one. He understood Crandall that all that he received at New York were there, except about a dozen. He recollected that Crandall said he had been a subscriber to some of the abolition publications. Witness or one of the magistrates asked Crandall "whether he was aware of the nature of the pamphlets when he left New York?" To which Crandall replied that he supposed them to be of the character with those for which he had been in the habit of subscribing. Crandall was also asked "why he was put in possession by the publishers of so many copies of the pamphlets, and whether it was not because they supposed he would circulate them and be an efficient agent?" In reply to which Crandall said "it might be so." He did not intimate that he had any knowledge of his appointment as an agent.

*The Court* here asked witness whether the traverser intimated that the tracts were given to him with his assent and approbation.

*Witness.* He admitted that the tracts contained his sentiments; but he was not understood to say that he approved of his appointment as an agent, or considered himself as acting in that capacity. When Crandall said the endorsements were written some time ago, witness called his attention to the date of one which was not two years ago. Witness received a written statement from Crandall at the examination. Does not know what became of it. Thinks it was returned to Crandall. Crandall did not say he knew the contents of the tracts when he received them, but said he supposed they were of similar character to those which he had subscribed for. Witness read a paper which contained Crandall's statement on the subject, and recollects that it was written in the jail. Has no recollection that it stated that Crandall was a member of an Abolition or Emancipation Society. When

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witness called Crandall's attention to the endorsements on the tracts, Crandall said they had been on some time. Believes he said something about two years, and recollects that he then remarked to Crandall that one of them had not been published two years.

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*B. K. Morsell, Esq.* , (called again) stated that Crandall, when asked whether he was acquainted with the nature of the pamphlets sent to him in New York, said he supposed that they contained his sentiments, and were of the same character with those which he had taken some time before. He used these very words, "I don't pretend to deny that I am an anti-slavery man, and profess these sentiments." The pamphlets were then before us, and the examination referred to them. He added, that when he came on here, he found he was too far South to circulate the tracts, and that all he had received were those before us, except about a dozen. He did not deny that he came direct to this city from New York. He said nothing which impressed witness with the belief that he stopped on the road, if he said he stopped on the way, witness did not hear it. There was considerable confusion in the jail during the examination. Crandall might have said many things which witness did not hear. There were a great many people in the jail. He recollected that Crandall said the words "please read and circulate" were written two years before, and that Mr. Coote pointed to a pamphlet, so endorsed, which had been printed within two years; but he understood that Crandall's statement was applied to all the pamphlets together. He understood that some of the pamphlets were found at Crandall's office, and some at his lodgings, and that they were found scattered about the office.

Does not recollect that there was any testimony about unpacking a box. There was nothing in the testimony which made any impression that there was any distinction between the pamphlets. They were all brought together. Recollects that Crandall handed him a written paper. Began reading it, but could not get through with it; could not read it, and handed it back to Crandall; supposed that it was written under some agitation.

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*Jacob Oyster* knew the prisoner in Georgetown, and prisoner hired a shop of him. He was sick some time after he hired it, but had a large box put into it. When he hired it he said he was going to lecture on botany at different places. Witness was present when he opened the box, and it contained books, surgical instruments, and pamphlets. He saw two or three such pamphlets as were shown in court, which were thrown out of the box. Mr. King came in and picked up a pamphlet and said he should like to have the reading of one; and the prisoner said he might. When King saw it, he said it would not answer, it was too far South. A day or two after he asked King what he thought of it, and he said he didn't like it, and asked witness if he had seen the endorsement, which he showed, "read and circulate." Witness didn't see any writing on the others. He had some conversation with Crandall when the news first came of the attempt to murder Mrs. Thornton, and told prisoner nobody was to blame but the New Yorkers and their *aid de camps*; and that the boy said he had made use of their abolition pamphlets. Crandall replied, that he didn't approve of putting them into circulation, for the excitement was too high already.

*Cross-examined.* He said he helped unpack the box—that he knew of no other pamphlets; but Crandall had newspapers to put up his plants. Witness was in the shop almost every day, and never saw more than two or three people there; and never saw Crandall talking with any colored people or slaves. He was in the habit of going out into the fields, and brought back a great many plants. He thought the prisoner conducted himself very well, and was a very steady man in every respect. The papers in his office were of all sorts, and from different cities.

*William Robinson* saw the words "read and circulate," but had never seen the defendant write. He had received similar publications but did not know where they came from. One came through the post-office, but was not postmarked where it was sent from; and had no postage on it. He returned it to New York to the publisher. He heard Crandall admit the handwriting to be his in the jail.

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*Charles Gordon* was in the War Department, and the whole building was flooded by them. He returned his to New York to the agent with remarks, and had received none since. This was just before Crandall's arrest.

Coxe remarked he had done the same; and it was no evidence against Crandall.

*The Court* was of opinion that the printing and publishing these pamphlets in New York, is not evidence of their publication here, so as to fix upon the defendant here such a knowledge of their publication as to make his possession alone, even with the words “*read and circulate*” written upon them, evidence of the publication of them by him here.

That in order to show the evil intent with which the defendant published the paper charged in this first count, it is not competent for the United States to give in evidence to the jury other *unpublished* papers or pamphlets found in the defendant's possession, unless accompanied by evidence of some acknowledgment or admission, by the defendant, that he knew and approved their contents.

That the evidence did not appear to the Court to justify the inference that the defendant knew and approved the contents of those pamphlets, unless it can be connected with evidence that they were of the same nature with those which he had been a subscriber for.

*Key* then proposed, as he had shown that the traverser had by his declaration approved of the publications, and had also implied approval by writing on the words read and circulate, to put them in as evidence of intent, in relation to the one published, and given to the witness King.

*The Court* ruled that they could not be given in evidence, without proof of publication.

*Key* then proposed to read the Emancipator, as a paper he had subscribed for, instead of which these had been sent.

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This was objected to on the ground that there was no proof that he has *subscribed* for the Emancipator; and that if he had, it was at a period previous to the time about which he was charged with any offence. The Emancipator was sent gratis, and *taken* by many persons who did not approve of it.

*Jeffers* was called, and said Crandall said he had *taken* the Emancipator, or *subscribed* for it, he did'nt know which.

*The Court* decided that such Emancipators might be given in evidence as were published before the declarations of the traverser.

*Thruston, J.* , dissented from this opinion on the ground that it was not competent to put in one libel, for which the prisoner was not indicted, to show the sentiments he entertained in regard to one for which he was indicted.

In the midst of considerable discussion as to the parts which were proper to be read on the different sides, the most of the day, Tuesday and 24 Wednesday, was consumed in reading long articles from different numbers of the Emancipators, to show that the Anti Slavery Society intended to use every exertion to procure the immediate abolition of slavery. In the course of this reading, *Key* proposed to read an advertisement of the different works published by the Anti Slavery Society, which was objected to on the ground that it would admit all the works named to be read, and as Crandall had not been proved to be a member of that Society, he ought not to be made answerable for all their doings, nor for all that the editor of the Emancipator might see fit to publish.

*The Court* decided that the reading must be confined within some reasonable limits. That the District Attorney might read such *editorial* articles, or parts of them, as he saw fit, and the counsel for the defence might read any other parts, or the whole, if they chose. The advertisement was of course rejected, but reading of other parts was continued.

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*The District Attorney* afterwards offered evidence, under the third count of the indictment, to put in certain tracts with pictures upon them, which was objected to upon two grounds. *First*, that the count was insufficient, as it did not specify any libellous publication and did not declare that the offence was against any person, or government, or people, which was said to be an essential form of indictment; and, *second*, because the whole of the tracts, papers, and pamphlets, were illegally obtained from the prisoner.

The defendant's counsel then read the warrant under which Crandall was apprehended, which authorized the officers to take the person of the prisoner, and to search his papers; and contended that such search warrant was illegal—that a man's private papers were sacred from search.

The objection was resisted on the ground that the objection was made too late. It should have been taken at the outset of the trial, or before the magistrates—that the warrant (which was admitted to have been made by the District Attorney) was proper, and conformable to the law which admitted of search in the premises and in the persons of thieves and counterfeiters for the tools and implements with which they were enabled to commit their crime—and that it was competent to use the evidence which had been obtained, although it was illegally gotten in the first instance.

*The Court* was of opinion that the evidence was competent, on the principle upon which evidence might be given of stolen goods found in consequence of confession, though the confession might be forced from the prisoner by threats or evil treatment. The confession might not be evidence, but the fact of finding the stolen goods could be proved to the jury.

*The Court* also overruled the objection to the form of the count, and did not consider it so imperfect as to authorize them to reject evidence offered under it.

Key then went on to prove that certain libels found in the possession of the prisoner were circulated in the District.



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*Gen. Hunter* identified one of the tracts as a copy of one sent to him through the post office, marked one cent postage, both the tract and envelope of which having been burnt. He thought it strange the postage from New York should be only one cent. It was about the time the city was inundated with abolition papers.

Coxe objected to the testimony, if the paper was destroyed.

*Key* was called as a witness by *Bradley*, and testified that the paper handed 25 the witness was one of them handed in at the jail as found upon *Crandall*, and had not been out of his possession since.

*Bradley* remarked that the paper was a July number, and had not been published when *Crandall* came from New York. If, by the testimony showed, they were all delivered in New York, this paper could not have been found upon him.

*James A. Kennedy* was shown a paper, and said his initials were on it. A considerable number of the same came on in a bag—about a bushel and a half—from New York, some of which were delivered and some were returned to the post office. The rest were not delivered at all. He did not recollect any of the same kind sent before, though many had been sent since, every month, as late as March last. They came in an envelope addressed to single individuals. The postage for a sheet was two and a half cents. These were marked half a sheet, and some were charged one cent and a quarter; afterwards, they were found to be more than half a sheet, and were charged two and a half cents, as for a whole one. There was no postmark put upon them, as that is confined wholly to letters.

*Benj. E. Giddings* saw some of these papers at the time spoken of by Mr. *Kennedy*; and never saw any before July last. They all came in a bag, and he did not think any were dropped into the post office here. The office here, as well as at Georgetown, had been watched to see if any were put in by persons here.

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The two last witnesses were clerks in the post office.

*Mr. Ball* said the papers were given to him at the jail, after Crandall's examination, and he kept them locked up till they were sent for and delivered to Mr. Key at his office.

It appeared that they were kept at the office some time, and were sealed and labelled by Charles McNamee, though one or two persons were in the office while he was doing it; and Mr. Key certified, that on the first day of the trial, before they were sorted, many persons in court took different numbers of them to look at, but he believed they were all returned, and he took pains to request them who took them to hand them back to him. To the best of his belief, the pamphlets now in court were the same which were delivered at the jail, without addition or diminution.

*P. R. Fendall* was connected with the office of the Colonization Society. The Anti-Slavery Reporter was sent from New York in exchange for the African Repository published by the Colonization Society; some controversy had existed between the two Societies, and it was necessary to read their attacks in order to be able to answer them. The papers received were open for the use of members, and were sometimes loaned to others to take away and read.

*Key* then offered four numbers of the second volume of the Anti-Slavery Reporter to the jury.

*Bradley* claimed one as his, which never was in the possession of the prisoner.

*Key* requested him to be sworn, and

*Bradley* testified, that he could identify the paper by several marks which he pointed out. He received it in November last, in consequence of a letter which he had written with a view to procure two or three, which were sent on through the post office. He wrote for them in consequence of conversation with Crandall; (but he was not allowed to state the

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substance of what Crandall said.) How this paper came into Mr. Key's possession he did not know, but this disappeared from his desk in court, and two others had been taken from his office.

Considerable argument ensued upon the point, whether it was competent to give in evidence a printed copy of a *known published libel*, or whether in order to be evidence against the person on whom it is found, it must not be a written copy. On one side it was argued that every one might innocently have a printed copy, but the having a written copy would show some extra-ordinary interest in the libel; and the books all spoke of a written copy only as evidence of publication. For the prosecution it was urged that having a printed copy was stronger evidence than a written one, especially when the party had a number of copies of the same libel, endorsed in his own handwriting with words that showed an interest, and an intent to circulate it.

*The Court* was of opinion that it was competent to give in evidence such printed copies of the known published libel as were found upon the prisoner with the endorsement "read and circulate."

Two witnesses were called, *Colclazier* and *Tippet*, to testify to conversations held with Crandall in the jail, in which he spoke in favor of immediate emancipation and against slavery.

The case for the prosecution was here closed.

*Mr. Bradley* then stated the opening of the defence. After some general remarks upon the course taken by the prosecution, and difficulty of getting witnesses here to testify in behalf of the prisoner, from so great a distance, as well as the impossibility of putting in depositions in a criminal case, without the District Attorney's consent, which he would not give, he went on to call the attention of the jury to the details he meant to prove. He intended to show Crandall's whole course of life, from his boyhood up; that he was regularly educated as a surgeon and physician, and settled in Peekskill; and that no

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man ever obtained a higher character for probity and skill; that he never was a member of an abolition society, and there was none in the place where he lived; that he had no idea of stopping here when he came on, but came as the attendant of an invalid family with whom he had resided; that the pamphlets were packed up, not by him, but by the lady of the house, as waste paper, without his even dreaming of their contents; and that the endorsements were put on some two years ago. He would show also that he had subscribed for temperance papers; but that the abolition papers were sent to him without his knowledge of their contents; that after he arrived here, and found this the best field in the world for the study of botany, he concluded to stop and give a course of lectures, instead of going to the West, as had been his intention previously, according to arrangements he had made. The bundle that was given him in New York, was sent without his knowledge of their contents. It remained tied up till a day or two before his arrest, when it was untied by Mrs. Austin; and, as had been proved by the officers who arrested him, up to that moment they had never been opened or even separated. He said he would show the law, and bring it to bear upon the points of the case; and he declared if he believed Crandall guilty of distributing or intending to distribute incendiary papers, he would abandon his cause, and no longer consider himself his counsel.

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The following extracts of speeches made in the Capitol at Washington, at the eleventh annual meeting of the Colonization Society, in which slaveholders themselves made remarks which, it was urged by the defendant's counsel, were quite as strong, and as much calculated to excite sedition, as the words of the libel charged against the prisoner. Mr. Key read the parts of his own speech not enclosed in brackets, to show the difference of meaning in the whole papers, and the difference of intent. The paragraph in brackets was read by Mr. Bradley.

The following is from Mr. Harrison's speech:

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“But a dearer land to our hearts is too to be regenerated. A wretched class, cursed with ineffectual freedom, is to be made free indeed, and an outlet is to be opened to those who will voluntarily disencumber themselves of the evil and the threatening ruin of another domestic pestilence. Public opinion must be the only agent in this: the most reluctant shall not be forced; the most timid shall not be alarmed by any thing we are to do. Hitherto and henceforward our plan has been and shall be without constraint on any one, and never shall we offer any argument or invitation to humanity divorced from patriotism. To this truly quiet, unofficious spirit, do I trust for bringing about the time when we shall be one homogeneous nation of freemen; when those great principles now true of us only in part, shall be true in the whole; and when the clear light now in our upper sky only, shall brighten the whole expanse of the American character.”

The speech of Mr. Key, the District Attorney, is as follows:

“On behalf of the Board of Managers, who had this night seen and heard all that was calculated to animate them to a faithful discharge of their duties, he begged leave to present a resolution of thanks for the zealous co-operation of the Auxiliary Societies throughout the United States. In the increasing exertions of these valuable branches of the parent Institution, the Society believed itself to possess the most satisfactory pledge that its design had received the approbation, and would ere long enjoy the support of the great body of citizens throughout our country. Such an anticipation was not to be thought delusive, because the opposition made to the Society at its commencement still continued. On the contrary, this very opposition, properly considered, affords the fullest proof of the wisdom of our object, and the fairest presage of its success.

“At its origin the Society found itself in a very extraordinary situation. It had scarcely been formed when it was assailed by opponents of the most contrary character, from the North and South. Men who held, upon these subjects, the most opposite views, who agreed in no one thing that related to our colored population, united in denouncing us. This state of things, in some measure, still continues. But the Board of Managers have long ceased

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to look upon it with alarm. They soon perceived that a wisdom far higher than their own, was, in a way most contrary to their expectations, gradually preparing the public mind for a fair consideration and favorable reception of their measures. They were compelled to see and to acknowledge that it was best it should be so. Had the design of the Society been approved and supported in the outset by either of these opposing parties, it must have encountered the settled and irreconcilable opposition of the other; but as it is, the Society, instead of being espoused by the North in opposition to the South, or by the South in opposition to the North, has 28 been silently filling its ranks with converts from both. Its cause has been gradually bringing over the moderate, the reasonable, the humane, the patriotic, from all parties and from every portion of the Union to give their aid and countenance to the support of a scheme which they once opposed only because they misunderstood it. I have adverted to this extraordinary opposition that the friends of the Society may not be dismayed by it; and I take this occasion to address a few words to each of these classes of opponents.

["I would premise what I have to say them by stating two very plain propositions. The first is, that the subject of slavery, in some way or other, will come into the thoughts, feelings, and plans of men situated as we are. It is vain to say—let it alone. There may have been a time when the excitement now felt on this subject might have been stifled. When it was determined by our fathers to secure to themselves and their posterity the rights of freemen and the blessings of independence, then should they have been warned of the exciting consequences that would result from the acquisition and enjoyment of such rights. Then should it have been shewn how they would lead to conceptions and discussions dangerous to the rights of property and the public peace. Then should they have been called to choose between these conflicting interests, and to count the cost of what they might lose by declaring to the world that all men were free and equal, and appealing to heaven for its truth. But there was, then, no man cold enough for such a calculation; no man who could darken the brightness of that day by raising such a question. It is too late now. In this age, in this country, the agitation of this subject is unavoidable. Legislation

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never can restrain it. Public sentiment never will. You may as well forge fetters for the winds, as for the impulses of free and exulting hearts; if speech and action could be repressed, there would be excitement in the very looks of freemen.]

“The other proposition is this, that among the plans and descriptions that relate to this delicate subject, it must happen that some will be rash and dangerous.

“It is not to be expected, that men, not well informed of facts as they exist, and misled by the ardor of an inconsiderate zeal, will not devise projects and hold them out to others, which may be attended with the most disastrous consequences. This is the nature of things. It must ever be so upon every subject, which like this contains within itself the elements of great excitement; more especially when that excitement is connected with some of the best principles and feelings of the heart.

“Now, sir, put these two propositions together; that silence and inaction are unattainable, and dangerous and improper projects almost unavoidable, and what are we to do? Something we must do. However desirous we might be to do nothing, it is impossible, because others will not consent to do nothing; and if we relinquish the task of action, it will infallibly fall into hands most unfit to receive it. Nothing remains, then, but to devise something safe and practicable and place it in prudent hands.

“And now, sir, I would respectfully ask our opponents, of both descriptions, to consider whether this has not been done by the establishment of this Society. I would ask the abolitionist to suspend his own labors, and consider the object and the consequences of ours. I would ask him if it is not 29 better to unite with us in what is safe and practicable, and may be managed with the consent of those, whose consent is not to be dispensed with, than to attempt to force his own views upon men, by means which they denounce as dangerous.

“Sir, this is the appeal which has been made by the Society, and which it yet makes to one class of its opponents. Nor is it altogether unsuccessful. Many active and benevolent men

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are now with us, who, but for this Society, would have been working on their own more questionable projects, and vainly attempting what, perhaps, can scarcely be pursued, with safety to the peace and happiness of the country.

“And may we not appeal also to our brethren of the South—and ask their fair consideration of the two propositions I have suggested? If feeling, discussion, and action, in reference to a subject upon which they are so sensitive, cannot be extinguished, is it not wise to endeavor to moderate and restrain them? May they not, if they cannot give their approbation to our Society, as good in itself, at least bring themselves to tolerate it as the preventive of greater evils? May it not be wise for those who must know that there are schemes more alarming to their interests than colonization, to suffer us to enlarge our sphere of action, and bring those who would otherwise be engaged in dangerous and injudicious projects, to unite in our safer labors? May we not claim at least this merit for our labors:—that they are safe? May we not appeal to the experience of eleven years, to show that the work in which we are engaged can be conducted without excitement or alarm? And who are we, we may be permitted to ask, to whose hands this charge has been committed? We have the same interests in this subject with our Southern brethren—the same opportunity of understanding it, and of knowing with what care and prudence it should be approached. What greater pledge can we give for the moderation and safety of our measures than our own interests as slaveholders, and the ties that bind us to the slaveholding communities to which we belong?

I hope I may be excused if I add that the subject which engages us, is one in which it is our right to act—as much our right to act, as it is the right of those who differ with us not to act. If we believe in the existence of a great moral and political evil amongst us, and that duty, honor and interest call upon us to prepare the way for its removal, we must act. All that can be asked of us is, that we act discreetly—with a just regard to the rights and feelings of others;—that we make due allowances for those who differ with us; receive



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their opposition with patience, and overcome it by the fruits that a favoring Providence, to which we look, may enable us to present from our labors.”

The next passages were from a speech of Mr. Custis, as follows:

“Sir, the prosperity and aggrandizement of a State is to be seen in its increase of inhabitants, and consequent progress in industry and wealth. Of the vast tide of emigration, which now rushes like a cataract to the West, not even a trickling rill wends its feeble course to the Ancient Dominion.— Of the multitude of foreigners who daily seek an asylum and a home, in the empire of Liberty, how many turn their steps toward the regions of the slave? None. No not one. There is a malaria in the atmosphere of those regions, which the new comer shuns, as being deleterious to his views and habits. See the wide-spreading ruin which the avarice of our ancestral government <sup>30</sup> has produced in the South, as witnessed in a sparse population of freemen, deserted habitations, fields without culture, and, strange to tell, even the wolf, which, driven back long since by the approach of man, now returns, after the lapse of an hundred years, to howl o'er the desolations of slavery.

“Where, I ask, is the good ship Virginia, in the array of the national fleet? Drifting down the line, sir,—third, soon to be fourth. Where next?—following in the wake of those she formerly led in the van: her flag still flying at the main, the flag of her ancient glory; but her timbers are decaying, her rigging wants setting up anew, and her helmsman is old and weatherbeaten. But let her undergo an overhaul, let the parts decayed by slavery be removed, and good sound materials put in their stead, then manned by a gallant crew, my life on it, the old thing will once more brace upon a wind, aye, and show her stern to those who have almost run her hull under.”

“Let me say, sir, in this legislative hall, where words of eloquence have so often ”charmed the listening ear,” that the glorious time is coming when the wretched children of Africa shall establish on her shores a nation of Christians and freemen. It has been said that this

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Society was an invasion of the rights of the slaveholders. Sir, if it is an invasion, it comes not from without. It is an irruption of liberality, and threatens only that freemen will overrun our Southern country—that the soil will be fertilized by the sweat of freemen alone, and that what are now deserts will flourish and blossom under the influence of enterprise and industry. Such will be the happy results of this Society.

“Let the philanthropist look at the facts. Nearly two millions of this unhappy people tread our soil. In the Southern climate their increase is more rapid than that of the whites. What is the natural result, if some means are not applied to prevent it? What is now, compared to our own population, but as a mole hill, will become a mountain, threatening with its volcanic dangers all within its reach. What is the next consequence? Why, as in the slave colonies of other countries, you must have an army of troops to keep in awe this dangerous population. What a sight would this be in a land of liberty! The same breeze that fanned our harvests, that played among the leaves of the cane and the corn, would also rustle banners of war! By the side of implements of agriculture, employed in the works of peace, will appear the gleam of arms. Shall it be said that we are not liable to the same vicissitudes that have overtaken other nations? No, sir; we are operated upon by the same circumstances to which other nations have been subjected.— The same causes will produce the same effects, as long as the nature of man is unchanged, in every clime.

“I trust, sir, that the march of mind is now upon its glorious way. I trust that the minds of all have been sufficiently opened to the true interest and glory of the country, to agree with me, that this is no fitting place for the slave. That this country must, at some future time, be consecrated to freemen alone. There are many individuals in the Southern country, of which I am a native, who predict that the plan must fail. They say we shall go on and partially succeed, that a portion of the black population will go out to the colony, and after residing there a short time, become discontented, when the plan must be given up—and that the evil which we have endeavored to remove will be only the worse for our exertion to obviate it. But this, sir, will not hold true. It was, as it were, but a few day since, a small number of individuals were thrown upon the shores of Africa. And what is the

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result? Here let it be said—in the palace of legislation—that this people, but just now a handful, are rising to consequence, and to a capability of the enjoyment of political and civil rights;—and let us say to those who doubt—this is the evidence in favor of our plan! Ought not this to join all hearts, and call forth renewed exertions from those whose labors have thus far been crowned with unexpected success?

“May not this be looked upon as a glorious work, the success of which has been demonstrated! And when the time shall come,—and I trust in God it will come—when this free and enlightened nation, dwelling in peace and happiness under the mild influences of its government and laws, shall have fixed deep the foundations of civilization in that distant land, hitherto only known for its wide-spread deserts and its savage race. Oh! sir, what will be the gratitude of that people, who, transferred from the abode of their bondage, shall enjoy the rights of freemen in their native clime!— And, oh sir, when we look to ourselves—when we see the fertilization of those barren wastes which always mark the land of slaves—when we see a dense population of freemen—when lovely cottages and improved farms arise upon the now deserted and sterile soil—and where now deep silence reigns, we hear the chimes of religion from the village spire;—will you not—will not every friend of his country, thank this Society for its patriotic labors! Yes! Kings might be proud of the effects which this Society will have produced. Far more glorious than all their conquests would ours be: for it would be the triumph of freedom over slavery—of liberality over prejudice—and of humanity over the vice and wretchedness which ever wait on ignorance and servitude!”

*B. Hallowell* , having affirmed, stated that he knew Crandall, and that he came here in May last, with introductions from very respectable sources. Dr. Crandall had also been here about a year before, at which time he (Mr. H.) wished to engage a person at his seminary in Alexandria, as a lecturer on botany. He offered him \$100 a year, and encouraged him to believe that he would considerably add to that income by making up different classes during the year. Dr. Crandall said, at the time, that he would take it into consideration, and if he should determine upon it, would move down. The Doctor did not return in time to fulfil

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that engagement. But he brought with him letters showing that he was a christian, a man of science, and a gentleman. He understood it to be Dr. Crandall's object to have a class not merely for one session, but for every summer, while he remained here. It was about the last of May or first of June when Dr. Crandall returned.

*General Fowler*, of Georgetown, stated that he knew Dr. Crandall, and that he was introduced to him, soon after he came, by a person interested in botany, as a man well acquainted with that science. Witness was fond of hunting after wild flowers, and proposed to take excursions with Dr. Crandall. They went out botanizing, six, eight, or ten times together. Their conversation was confined to that subject, and witness had no reason to suppose that Dr. Crandall had any incendiary pamphlets, or was at all engaged in the circulation of them. His conduct, so far as he had seen him, was that of a gentleman. He never knew him to converse with any negro. He 32 never had any pamphlets with him, to his knowledge. Dr. Crandall's knowledge of the science was far beyond that which witness professed to have.

*Ward B. Howard* stated that he had known Crandall some years: at least for seven or eight years. Witness was then resident at Peekskill. His reputation was good, and he never heard that he was an abolitionist. Witness himself had no fancy for abolitionists. There was no society of them at Peekskill. Crandall resided in Peekskill seven or eight years, and had, as he understood, attended the medical lectures at Philadelphia, and received a diploma there. He had brought letters of introduction to witness when he came to Peekskill, with the view to settlement there. Dr. Crandall was actively engaged as an agent for the temperance society. Witness would not now know the handwriting of the traverser. He might know the signature, but not the general handwriting.

*Jackson O'Brown* was living at Peekskill when Dr. Crandall first came there. He boarded with him nearly two years, and had an opportunity of seeing much of his character; a great part of the time he roomed with him. The witness never heard that he was engaged in the abolition societies, though he knew he was an active member of the temperance society.

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*Henry Gaither* said he was in Linthicum's shop at the time when Dr. Crandall was arrested. That an hour before he had heard that the officers were in pursuit of him. He saw the officers, Robertson and Jeffers, enter the office; and noticed a crowd gathering around it. He asked Jeffers, as soon as he came out, what he had discovered, and Jeffers, in reply, said he had found more than he expected, and had taken 150 or 160 pamphlets. There was much excitement then in the vicinity. Witness was then himself excited. When Crandall came out, witness was apprehensive that he would be wrested from the officers by the people. Oyster came in, and witness asked him if he had seen any pamphlets. He said yes, but not more than two or three. Witness remarked, that Jeffers said he had seen and taken 150 or 160. Oyster replied, Jeffers is a liar. Some conversation followed, in which it was suggested that attempts might be made to prejudice the public mind against Crandall. Witness had since met Jeffers, on the Avenue, and spoken with him on the subject. Witness remarked to Jeffers, the poor fellow has suffered enough by so long a confinement, and Jeffers assented to the remark, and added that he believed Crandall to be innocent.

*Jared Stone* was acquainted with Crandall, who lived three years in witness's family, and eat at his table, in Peekskill. Crandall was a physician who obtained a good reputation in that part of the country, and it continued unblemished. He never was known to have any abolition papers, or to say any thing in its favor, but was, if any thing, opposed to it.

*Mr. Wilson* was present at the time spoken of by Mr. Gaither, and said one of the officers came out and said he had discovered more than he expected, and remarked, my hopes are more than realized. He could not recollect exactly the number of papers the officer said he had found, but thought it was one hundred or a hundred and twenty. Some one in the crowd said "we ought to take the damned rascal and hang him up on one of the trees opposite." The witness then went away.

*Mr. Judson*, Representative in Congress from Connecticut, had known Crandall from his boyhood. Crandall studied with witness's family physician, 33 and acquired a good

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reputation; nobody stood better in the neighborhood. After he had finished his education he removed to Peekskill, since which witness had been in the habit of seeing him frequently; and he had always known him as a peaceable citizen. The precise year when Crandall was admitted he could not recollect, but it was about 1827 or 1828. Witness had not seen him for two years till he saw him here in prison, and had never heard aught against him till now. Mr. Judson also testified, that the prisoner was a brother of Prudence Crandall, and that at the time of the difficulty with her and her school for blacks in Connecticut, he met Crandall on board the boat on his way home from New York; that he talked with him about that school, and the prisoner said he was going to break it up; that he did not know as he should be able to do it, for his sister Prudence was obstinate, but his other sister, who was with her, he knew he could get away. Crandall then continued home with the witness, and exerted himself with as much zeal as any one could to break up the school.

*Dr. Sewall* testified that the traverser came to him some time in the spring to get a license to practice in the District, and showed him two letters of high recommendation. He had some conversation with Crandall upon subjects of science and upon his knowledge of medicine and surgery, and formed a high opinion of his talents and acquirements. He advised the defendant by no means to abandon the practice of his profession for entering upon botany or chemistry, but if he could do that without interfering with practice, it might do; he thought him too well qualified in the profession to give it up. Crandall also showed the witness a diploma, which was regularly signed, and he gave a verbal license to practice, and said at the meeting of the Board he would have a regular license made out. He had no reason to believe, from his conversation with the prisoner, that he had any object in view except the pursuit of his profession. All the stories that he had talked upon the subject of abolition with witness, and given him Anti-Slavery papers, were mere idle talk.

*Mr. Howard* said he was sheriff of Winchester county, where Crandall lived, and identified the handwriting of signatures to a letter of recommendation which Crandall brought with

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him, and which was allowed in evidence. All the signers were respectable men. Witness thinks he should have known if any Anti-Slavery Society existed there—but he knew of none. He also remembered that Crandall delivered lectures on chemistry there, and he attended them.

*Mr. Ward* , Representative from the district where Crandall resided, knew that he had lived there seven or eight years, and that he had a high reputation as a respectable man, and a good physician.

*Mr. Austin* was now a resident in Georgetown, but formerly lived in Peekskill, where he knew the prisoner, who lived in his family three years. He came then in consequence of having raised up Mrs. Austin from a dangerous sickness. Witness was a lawyer, and knew, Crandall's reputation to be high as a physician and surgeon, far and near. Witness was President of a Temperance Society, and Crandall was Secretary; he did not know of any Anti-Slavery Society, and did not know or believe that the prisoner belonged to any, or had any thing to do with them. Crandall came on at his request to accompany Mrs. A., who, with her two children, were always severely sick in travelling; and returned home soon after, when he 3 34 came back again to stop here to teach botany. He came to witness's house on his return, and was taken sick soon after and confined to his room. Witness was not a subscriber for the Emancipator, though he understood one of the numbers in court was addressed to him. He never saw any abolition papers in Crandall's possession. If he had, they would have attracted his attention. Witness did not know how the large box of books and papers came on, but supposed they came by water when Crandall came the second time. He could not say distinctly, but he thought a Mr. Dennison, an abolition agent, once left some abolition pamphlets at his house for himself, and some for Crandall. He could not identify them in court as the same, and he could not swear whether the endorsement on them was in Crandall's handwriting or not.

*Mrs. Austin* said she had known the prisoner as long as Mr. Austin, and that his conduct in her family was irreproachable. She remembered Mr. Dennison's having left pamphlets

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for Crandall and her husband, but could not say those in court were the same, but they were similar. Crandall came at her husband's request, to accompany the family, because they were sick in travelling. He did not wish to come further than New York, and would not consent to come further than Philadelphia; but as Mr. Austin did not meet them there, he kindly came on to Washington. She was cleaning up the house, preparatory to leaving it, and gave Crandall the large box; and asked his permission to put into it his books and papers. These pamphlets were lying as waste paper in the garret, and she threw them with others into the box. Saw that some of them had writing on, but did know of any with writing on in the trunk. The box was sent round by water, but he brought the trunk when he came on the second time. He did not carry it to the house when he arrived at night, but it was sent over in the morning. Crandall was immediately taken sick, and witness frequently went to the trunk for various purposes, and saw a package nicely done up, which she supposed to be books. The package remained just as it was tied up at the bookstore, till six or eight days before the prisoner's arrest, when she had curiosity to know what it contained, and he consented that she might open it.

Some conversation was held between witness and prisoner, before and after opening, which the court refused to admit in evidence.

Mrs. Austin went on and testified, that she did not tie up the package again, but left it, and she saw it repeatedly in the same state up to the time of prisoner's arrest. She also saw several Emancipators in the house, and one or two tracts sent by mail, which she used or destroyed as waste paper.

*Bradley* here offered to put in two letters and a deposition from the man who gave Crandall the package in New York.

*Key* objected that it was not legal evidence.

*Bradley* knew it was not, but the witnesses were beyond the reach of the court—they could not be forced to come and testify; and had distinctly declared that they were afraid to come



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into the District. He had last term requested the District Attorney to join him in taking their depositions, in consequence of the circumstances, but having been refused, he had gone on and taken them *ex parte*, and he hoped they would be allowed to go to the jury.

*Key* was willing to admit any thing reasonable, but this testimony was clearly inadmissible.

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*The Court* said, by the rules of evidence, it could not be given but by consent.

*Mr. Carlisle* opened the summing up for the prosecution, and remarked that his was observed by the opposite counsel to be the only case of seditious libel ever brought before this court, and I will add, gentlemen, that the decision of it may determine whether or not it may be the last;—whether or not this traverser may return to his fellow laborers in iniquity, and inform them that *here* he has found the gates wide open, and the way all clear for the propagation of their libels and their plans. It has been truly said that this topic is one of excitement all over the country. Under these circumstances this traverser may congratulate himself upon the opportunity of a fair and full trial, and that he has not been the victim of summary justice. But, gentlemen, let justice lose nothing of its proper efficiency by being administered with coolness and deliberation. The opposite counsel say that the charge is grave. Aye, gentlemen, it is so, but the proof is full. The offence charged is one of a fatal, devastating, and, beyond all power of palliation, most horrid character. These libels are not like common libels, which tend to bring individuals into discredit and disrepute. It is an offence of which the like is not contained in the annals of criminal jurisprudence, peculiar to the state of our society, and in enormity equal to all other crimes combined. An opulent and extensive society send out their emissaries and commission and enjoin them to scatter these infamous productions in the highways and by-ways; to proclaim them from the house tops, and whisper them in the chimney corners; to teach to all, high and low, that slaveholding is man-stealing; and yet they mean no such thing as breaking the peace, and abhor all violence and tumult. Does the preaching such language to slaves tend to pacification?

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Mr. Carlisle was here commenting upon the nature of the agents employed for these unlawful purposes, to show that educated men, such as Dr. Crandall, were the kind naturally to be selected, and was further proceeding to examine the evidence as applicable to the laws, and, in his opinion, conclusively establishing the guilt of the traverser, when extreme physical debility and indisposition prevented him from proceeding.

*Mr. Bradley* then commenced summing up for the defense. He said the nature of the charge was such that it was almost impossible to set aside the prejudices which had been cherished from youth up, and which were so natural to men of this section of the country; but he felt confident the jury would give him a patient hearing, and judge correctly after a careful consideration of the case. He then gave a statement of the points of the evidence, upon which there was no dispute; such as—That the prisoner allowed one pamphlet to be taken by Mr. King; that he was found here with a number of other papers; that some came round in a box by water; and that others were given him in New York, and brought on in his trunk. He wished to draw a distinction between the kinds of papers. It was proved that a bundle of papers were found, and they were here in court; but the contents were unknown; whether good or bad the jury had no right to infer. A large number of papers were found, some of which were brought away and the others were left. That was all the jury had to consider, except in regard to three numbers of the Anti-Slavery Reporter, five numbers of the Emancipator, 36 and the little pictures which were cut from a work, and represented in contrast two modes of education—one where children were whipped, and the other where they were taught more mildly by means of books.

He would not stop now to consider the declarations said to have been made before the magistrate. Nothing could be more unsatisfactory and uncertain evidence than these examinations. The very fact that a man is accused throws him off his guard, and he may say what he does not intend, or which, if he did, in the midst of excitement the witnesses might not properly understand or correctly remember. It was said there were contradictions

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in his statements, but that supposition arose entirely from a mistake of one of the justices. The other understood it differently and saw no mistake at all. It respected the manner in which he brought on the books—one understood him to say that they were all given to him in New York, and that he brought them here, and they were all in the jail but about a dozen; and then, at another time, he said that he had some of them a long time. The other justice understood him to say that all that he brought into the District were there, and that they were all he brought from New York, except about a dozen, which he supposed he had left by the way. Neither of these suppositions were right. When he said they were all of them, he meant to say all he brought from New York; that he had distributed none, for even the one he loaned to Mr. King was taken by the prisoner from Linthicum's shop, and was then in Mr. Key's possession, though they supposed it was lost; and when he referred to about a dozen, he meant that he brought them all with him except about a dozen, which came in a box by water. It had been said that he admitted he had circulated a dozen; and yet the United States' witnesses prove that he denied having circulated any, and from the first disapproved of putting them in circulation. When the learned counsel asked why the persons were not brought, to whom he had given the dozen, to show that they were respectable men, he should have remembered that the testimony was all against such an idea; and that, if he had distributed any, the zeal and perseverance of the District Attorney and the officers would have discovered evidence of it.

It was also asked why the person who gave the bundle to him in New York was not brought to testify in his favor? as if the criminal wretch who had palmed off these incendiary papers upon an innocent man, without his knowledge, could be brought here to testify, when he was beyond the jurisdiction of the court, and had declared that he was afraid to come. He had requested the Attorney to have a deposition taken, but he refused; and when he was spoken to, he threatened a prosecution, and said he should like to see him; he wished he could get him. The Attorney now says he would be safe; perhaps so from him; but there are here, as elsewhere, hundreds of base cowardly scoundrels, who are willing in mobs to hunt down any one against whom they conceive a prejudice;

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men who dare not face a man alone, but who, backed by a mob, are willing to assail an individual without knowing any thing of his guilt or innocence.

Mr. B. then commented upon the character of the libel charged, and read the first count. The first paragraph, he argued, contained no incendiary unless it was to call slavery a crying abomination. He had not known before that those words were calculated to stir up insurrection. People were in the habit of hearing them daily from the pulpit, and he 37 never knew that they became seditious on account of it. The whole of the matter was a controversy between the Anti-Slavery Society and the Colonization Society, in relation to the expediency of their different measures; and if any body could make any thing libellous, he must have intellectual spectacles stronger than those with which Newton looked at the stars. In the next paragraph slavery is called "unrighteous," which was the great offence charged there. If this was a libel, he should show that Arthur Tappan & Co. were not singular in the guilt of libelling; for that fathers of the church in a slave state had called slavery unrighteous too, and that some of the most eminent of our patriotic Southern politicians had used far stronger and more exciting language.

This was all a controversy whether it was proper that provision should be made that no slave should be emancipated unless provision was made for sending him out of the country; and the writer contends that to make sending a man out of this country, where he was born, a condition of releasing him from bondage, in which he was forcibly held was a moral absurdity; and to say so might be libellous, but he could not understand how it should be so. Some of the jury would recollect when a discussion of this topic took place in the Legislature of Maryland upon a proposed law to the same effect, and they would remember that similar arguments were used there.

The next passage was an extract showing the treatment of slaves in another country, different from ours, where they have no law to protect the persons of slaves; and could not apply to the condition of any portion of our people. It could not be libellous to have the

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book giving the original journal of the traveller, and, if it were not, he did not see how any evil or excitement could be produced by this extract.

He came next to the passage in the second count, which was an extract of a speech, in which the orator tried to say something grand; but it amounted to no more than had been said by slaveholders themselves; and though the Attorney said it with an amusing emphasis, yet he would show stronger language, to the same purport, in the writings of Mr. Jefferson and of Mr. Archer, of Virginia, which had been approved by all who heard or read them.

The whole argument used in the Anti-Slavery Reporter, he contended, was mild and temperate, more so than could be expected, when the different habits and modes of thought of the people from whence they came were considered—a people who, from infancy upward, had heard nothing but the accents of freedom, and had never lived in a country where they could actually know the practical effects of our system of slavery. The example was set them by the ablest writers here, and if we publish and send to them similar writings, is it to be considered wonderful that, in their discussions, they should adopt it. Their argument is, that slavery may increase to be an evil which, by and by, cannot be remedied without violence and bloodshed; and it is addressed to men who have the power and the influence to apply a remedy now. The same arguments were published here by the Colonization Society, which does honor to human nature, and were founded on extreme necessity.

He read numerous extracts of books to show that similar expressions to those in the libels charged, were not considered blameable if uttered or published 38 at the South; and denied the right of the District Attorney to take particular words, here and there, and hold them up to fix the character of the paper, without regard to the connexion in which they were used; and he said that if Crandall was indictable for the language and meaning of the Anti-Slavery Reporter, then every member of the Colonization Society were liable to indictment.

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[It may be proper to introduce one or two extracts, that the reader may know the character of the papers read. The following are taken from an address to the Colonization Society of Kentucky, by *R. J. Breckenridge*. ]

“There are some crimes so revolting in their nature, that the just observance of the decencies of speech deprives us of the only epithets which are capable of depicting their enormity. Every well regulated heart is smitten with horror at the bare idea of their perpetration; and we are uncertain whether most to loathe at the claim of those who habitually commit them to companionship with human nature, or to marvel that the unutterable wrath of heaven doth not scathe and blast them in the midst of their enormities. Let the father look upon the dawning intelligence of the boy that prattles around his knee, the pride of his fond heart, and the hope and stay of his honest name; and then, if he can, let him picture him in distant bondage, the fountain of his affections dried up, the light of knowledge extinguished in his mind, his manly and upright spirit broken by oppression, and his free person and just proportions marred and lacerated by the incessant scourge. Let the husband look upon the object in whose sacred care he has “garnered up his heart,” and on the little innocent who draws the fountain of its life from her pure breast, recalling, as he gazes on one and the other, the freshness and the strength of his early and his ardent love; and then if he be able, let him picture those objects, in comparison with which all that earth has to give is valueless in his eyes, torn from him by violence, basely exchanged for gold, like beasts at the shambles, bent down under unpitied sorrows, their persons polluted, and their pure hearts corrupted — hopeless and unpitied slaves, to the rude caprice and brutal passions of those we blush to call men. Let him turn from these spectacles, and look abroad on the heritage where his lot has been cast, glad and smiling under the profuse blessings which heaven has poured on it, let him look back on the even current of a life overflowing with countless enjoyments, and before him on a career full of anticipated triumphs, and lighted by the effulgence of noble and virtuous deeds, the very close of which looks placid, under the weight of years made venerable by generous and useful actions, and covered by the gratitude and applause of

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admiring friends; let the man-stealer come upon him, and behold the wreck of desolation! Shame, disgrace, infamy, the blighting of all hopes, the withering of all joys; long unnoticed wo, untended poverty, a dishonored name, an unwept death, a forgotten grave; all, and more than all, are in these words, *he is a slave!* He who can preserve the even current of his thoughts in the midst of such reflections, may have some faint conception of the miseries which the slave trade has inflicted on mankind. I am unable to state with accuracy the number of the victims of this horrible traffic; but if the least dependance can be placed on the statements of those persons who have given the most attention to the subject, with the best means of information, 39 it unquestionably exceeds ten millions of human beings exported by violence and fraud from Africa. This appalling mass of crime and suffering has every atom of it been heaped up before the presence of enlightened men, and in the face of a Holy God, by nations boasting of their civilization, and pretending to respect the dictates of christianity. The mind is overwhelmed at the magnitude of such atrocity, and the heart sickens at the contemplation of such an amount of human anguish and despair.“

“The legislative acts which, with a cool atrocity, to be equalled only by the preposterous folly of the claim they set up over the persons of God's creatures, doom to slavery the free African the moment his eyes are opened on the light of heaven, for no other offence than being the child of parents thus doomed before him, can, in the judgment of truth and the estimation of a just posterity, be held inferior in heinousness only to the first act of piracy which made them slaves. It is in vain that we cover up and avoid such reflections. They cling to us, and earth cries shame upon us that their voice, has been so long unheeded. The free Lybian, in his scorching deserts, was as much a slave when he rushed, in the wild chase, upon the king of beasts, as is his unhappy offspring before our laws cleave to him. God creates no slaves. The laws of man do oftentimes pervert the best gifts of nature, and wage an impious warfare against her decrees. But you can discover what is of the earth and what is from above. You may take man at his birth, and by an adequate system make him a slave, a brute, a demon. This is man's work. The light of reason, history and

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philosophy, the voice of nature and religion, the Spirit of God himself, proclaims that the being he created in his own image he must have been created free.”

“It can be no less incorrect to apply any arguments drawn from the right of conquest, or the lapse of time, as against the offspring of persons held to involuntary servitude. For neither force nor time has any meaning when applied to a nonentity. He cannot be said to be conquered, who never had the opportunity or means of resistance; nor can time run against one unborn. Those who lean to a contrary doctrine should well consider to what it leads them. For no rule of reason is better received, or clearer, than that force may be always resisted by force; and whatever is thus established, may, at time, be lawfully overthrown. Or, on the other hand, if error is made sacred by its antiquity, there is no absurdity or crime which may not be dug up from its dishonored tomb, and erected into an idol around which its scattered votaries may reassemble.”

Mr. Bradley then went on to argue upon the tendency of the libels, and contended that they were not calculated to excite sedition. They are not addressed to the colored people, nor adapted to excite insurrection and revolution among them. They are calm appeals to reason, designed to produce measures to arrest a danger which they think threatens them, in common with their brethren of the South.

He next adverted to the law of publication. There were two grounds of publication—one is legally to be inferred—the other actually proved. The monstrous doctrine is contended for by the prosecutor, that if a man has a libel in his possession, if it was publicly circulated in the country, the possession is *prima facie* evidence that he put it in circulation. To show the absurdity of such a position he took a case of a favorite popular libel, which would be all sold in a day, and said that it would be impossible to find 40 an impartial jury to try a case under such a law—because it would not be easy to find twelve men drawn as jurors who would not have been possessors in some way of the libel, and of course equally criminal.



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Having a written copy of a published libel in one's own handwriting may be *prima facie* evidence; but it is not so with a printed copy. The publication must be brought home to the defendant. An actual publication is when the party puts the libel in circulation—when he gives it to a third party, either by himself or an agent, for the purpose of having it put in circulation.

The evidence in this case, he contended, afforded not only no proof, but no presumption that he published the libel. The one copy he allowed King to take was not given to be circulated. He had been warned of the danger, and had avowed his opposition to having such papers put in circulation. There could be no pretence that it was given to stir up mischief; and if any one was responsible for any evil effects, supposing any to accrue, it was Mr. King who had shown it, and left it exposed openly in a shop. But he argued that the loan of the paper to King was simple possession—he had afterwards taken it back from the shop, and no evil had been done or intended.

The intent, he said, must be gathered from the circumstance of the publication, and not alone from the libel charged; and he then commented upon the manner in which this paper was taken by Mr. King, and upon his character as a substantial, respectable man, who had just given the prisoner a warning, to show that no presumption could arise of an intent as charged in the indictment. The words “read and circulate,” upon which so much stress had been laid, showed no evidence of an intent to publish the pamphlets here, for they were put on two years before in Peekskill; and even the having them brought here was no act of the prisoner's, nor does it appear that he knew they were in the box.

He went at length into an examination of the evidence tending to show Crandall's good character, and the accidents which brought him here and induced him to make it his permanent residence. The trouble and excitement, he said, had not been owing to the prisoner or to any act of his, but was entirely owing to the misapplied zeal of the officers, and to their indiscretion and stupidity. He said he had gone over all the evidence of publication, and it was certain that no other publication had been made by him, for the

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District Attorney would have brought proof of it; if one had been dropped ten fathoms deep, into the vilest well, some one would have been found to fish it up.

He traced the course of the prisoner from his boyhood to college, and to the study of his profession—from that to his settlement at Peekskill; and urged upon the jury the consideration of his uniformly sustained character, and of his blameless life. He followed him with Mr. Austin's family to this city, and afterwards shewed his course to New York, when the important bundle of abolition tracts was palmed upon him; and then followed him here with those papers, which he did not even open, and of which he could not have known the contents, till he was informed by Mrs. Austin. He had shewn that no Anti-Slavery Society existed where he came from, and that he had never been a member of any such society. He had also shewn his acts, in connection with his good character and principles, when he went to Connecticut to suppress the school founded by Arthur Tappan & Co., which he thought an improper and dangerous institution; and though he 41 has always avowed himself to be opposed to slavery, yet he has always been as firmly opposed to excitement. He had traced him here, and shewn his declarations and principles here, and the business in which he was engaged.

He said he had been satisfied, early in the trial, that there was no ground for the prosecution—that the counsel for the United States had not made out a case which would satisfy themselves or you; but it was necessary to go on with the trial, for the satisfaction of others. The public were anxious to have the whole truth before them; and he was happy to believe that the jury would come to the conclusion that the Government had wholly failed, upon their own evidence, to make out a case which would justify a conviction of the prisoner.

*Mr. Coxe* addressed the jury. He was not aware, he said, that during his whole career as a professional man, he had ever entered upon the discharge of his professional duties with feelings of more anxiety than in the present case. The interest which he felt in the result was not limited to the consequences which might befall the traverser—an

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individual to whom he was an entire stranger; but principles had been advanced, and a course of proceeding adopted in this case, which involved results of the most general and momentous character; results which may to-morrow, and through all time, be brought to bear upon each one of us and upon our posterity.

The cause now on trial was the first of the same description which, to his knowledge, had ever been brought up for judicial decision. It was an indictment for a seditious libel at common law. Mr. Coxe here adverted to a portion of our history, during the administration of the elder Adams, when we were threatened with a foreign war and internal commotion, and when it was believed that a resort to unusual means of protection from impending peril was necessary. At that crisis was passed the act of July 14, 1798, commonly called the Sedition Act, by which it was provided that any person guilty of uttering a seditious libel against the Government of the United States, with intent to defame the same and bring it into contempt and disrepute, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years. The act was denounced as tyrannical, oppressive, unconstitutional, and destructive of the liberty of speech and of the press, and it was made one of the principal charges against the party in power of that day, and was the chief means of its overthrow. During the short period of the existence of that odious law, some few prosecutions were instituted under it against obnoxious individuals; and these were the only cases of prosecution for seditious libel that had ever occurred in this country.

In the present case, an attempt was made to apply the well known principles of the common law to the same improper and unconstitutional end. The case was new to our courts, and was of rare occurrence in the courts of England. Without being a prophet or the son of a prophet, Mr. Coxe said he would venture to predict that, if the doctrines which had been urged in behalf of this prosecution, and the proceedings which had been here justified by the District Attorney, should be established as lawful, the seeds will have been sown from which will be reaped, for us and for our children, a harvest of woe and disaster.

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He could not, therefore, but deeply feel the share of responsibility which 42 devolved upon him in the management of this case, and in the vindication of the great principles of constitutional liberty in which he had been nurtured and to which he was bound to adhere.

If, upon such a warrant as was issued against this traverser, any individual in this community might be arrested, his papers seized and examined, his most private correspondence exhibited to the public gaze, and if all this proceeding was to be warranted by the laws under which we live, then, gentlemen, said Mr. Coxe, this District is no place for me. He would seek some place where he would be safe from such outrages—some place where the principles of civil liberty are still understood and cherished.

If, upon testimony thus illegally obtained from him, without having been guilty of any overt act against the peace of the community, he could be indicted for sedition, incarcerated for eight months preparatory to a trial, and then be told that for having such publications as the traverser had in his private custody, under his own lock and key, or for loaning one to an intelligent friend, for his single perusal, he should be exposed to conviction and punishment for sedition, then he would, to escape such tyranny, expatriate himself, abandoning a land no longer free.

But this was not, and could not be the law of this District. What was the case? Let us go back to the 10th of August last, when this warrant was placed by a justice of the peace, acting under the advice of the District Attorney, in the hands of the officers who served it. The only foundation of the prosecution was simply this: Mr. King, while visiting the office of the traverser, with whom he was in habits of intimacy and free intercourse, saw there lying about the room, amongst various works on different branches of science and the arts, three pamphlets, which were taken from a box containing surgical instruments, books on surgery, and botanical preparations, in packing all which the pamphlets had been with other papers employed. Mr. King casually taking up one of these pamphlets, read its title page, and remarked that this was too far South for such things. He asked permission of the traverser to read it, which was granted, and up to the 10th day of August,

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a month afterwards, this was the extent of Dr. Crandall's offence. The affidavit in the warrant did not even go so far as this, in any positive charge. William Robinson, who made the affidavit, deposed that he had seen in Georgetown an incendiary pamphlet having upon it the name of Dr. Crandall, and that he, the deponent, had been informed and believed, that Dr. Crandall was engaged in distributing and circulating such pamphlets. The only positive averment in the affidavit was unimportant, and, if important, was untrue. Mr. Robinson, when examined, had no recollection of such a pamphlet, and there was abundant evidence to prove that the pamphlet loaned to King was now in court, and there was no such endorsement on it. He had not, therefore, seen a tract with Dr. Crandall's name upon it. That Dr. Crandall was engaged in the circulation of this or similar pamphlets was equally unsupported by evidence. Upon this allegation, so flimsy and so false, the Justice, acting under the advice of our learned District Attorney, issued the illegal and unconstitutional precept which he held in his hand. By this warrant the constable was directed to search and examine the traverser's private papers, to select such as might appear to be incendiary and to bring them and the traverser before some justice of the peace, to be dealt with according to law.

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This illegal process, thus illegally executed, had been justified by the District Attorney, who had avowed himself ready, whenever required, to prove that it was lawful. On the other hand, he, Mr. Coxe, pledged himself, on all occasions, and whenever the question might be presented for argument and decision, to brand it as tyrannical, oppressive, illegal, and unconstitutional.

The next evidence for the prosecution was found in the pamphlets thus stolen, and the possession of them by the traverser was alleged as proof of their publication by him. Against this false and more than inquisitorial doctrine, he solemnly protested. Let the accidental possession of a denounced pamphlet be made proof of its utterance and publication by the possessor, and let the new process of detecting and bringing to light that obnoxious pamphlet be established, and what man, in the whole community, can

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be safe in the enjoyment of his personal rights? May not any man be subjected to be treated as a felon, upon the instigation of private malice, or party animosity, or religious rancor? How easy would it be to find a magistrate at any time, who, confiding in the learning and experience and official character of the District Attorney, will, at his instance, grant such a search warrant against any individual?—and how easy will it not be to find constables, who, in the execution of it, will raise a hue and cry, and an excitement against the individual at whom the process is levelled?—so that if he escape the tyranny of the law and of the officers of the law, he may, nevertheless, fall a victim to the blind and ignorant violence of popular fury!

Two things, Mr. Coxe said, must combine to bring the traverser, in this case, within the law, if indeed there was any law to meet the case. The publications themselves must be calculated to excite insurrection among the blacks, and contempt of government among the whites; and the mode and manner of the publication must be such as to justify the supposition that the publisher intended to produce this effect.

If both of these facts could not be proved, the prosecution must fail, and the traverser be entitled to a verdict of acquittal. Admitting that the character of the pamphlets was incendiary, and as mischievous in their tendency as the District Attorney may, on this occasion, be pleased to represent them, still it cannot be shown that the traverser was guilty of any injurious or malicious dissemination of them. The loan to Mr. King was the only instance proved of distribution, and could that be considered malicious? Mr. King was admitted to be an intelligent and discreet citizen, without any sympathies with the abolitionists, and he could read one of these pamphlets with as little injury to the public welfare, as could this court and the many individuals to whom the District Attorney had been reading them. If the traverser had been criminal, Mr. Key had been still more so. If Dr. Crandall is punishable for yielding a reluctant and hesitating consent to the request of Mr. King to be allowed to take one of these pamphlets and read it, to what condemnation

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has Mr. Key subjected himself by forcing these same tracts, and particularly the worst passages he could select from them, upon the attention of so many individuals?

But another ground had been taken against the traverser. He was charged with being a northern man; a native of Connecticut, and a resident of New York. Have we then, said Mr. Coxe, lived to see the day when in a court of justice, in the federal city, under the very eyes of Congress, and of the 44 National Government, it can be urged against an individual arraigned at the criminal bar, as a circumstance of aggravation, or as a just ground for suspicion, that the individual comes from the North or the South, from the East or the West? But we were told, that the Northern men were interlopers and intruders amongst us. He protested against the use of such language, especially in the District of Columbia, which was dependant for its very existence upon the bounty of Congress, and which owed so much to the liberal policy extended to it by Northern men. Mr. C. admitted that there were in the North some vile fanatics, who, under the guise of purity and zeal, had attempted to scatter firebrands amongst us; men who propose to accomplish the worst ends by the most nefarious means; men who, under the professions of christian sympathy and humanity, seek to involve the South in all the accumulated horrors of a servile war. These men were, however, few in number and contemptible in resources. On the other hand, there were men at the South who, for base motives, make themselves auxiliaries to this excitement, and endeavor to alarm and agitate the people of the South by misrepresentations of the general feeling and policy of the people of the North. With neither of these two classes of fanatics had the people of this District any common interest. As a citizen of this District, he protested against making it the arena for the operations of these incendiaries. It was for this jury to resist the first attempt, now made, to render our courts of justice accessory to their designs.

He would demonstrate from the evidence that the traverser had no part in producing the excitement which prevailed in this District during the last summer. Dr. Crandall was not even the innocent cause of it. It was an excitement got up against Crandall, and not by him. When the constables went to his lodgings and office with their warrant, there was no

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excitement nor commotion among the people. All was calm, and but for the constables and their process, would have remained so. But they published in the streets of Georgetown the nature and object of their errand, and collected a number of individuals who were curious to see the result of this extraordinary search. One of the constables, Jeffers, after leaving the office of the traverser, goes to Linthicum's shop, and there proclaims to the assembly that "they had found more than they expected;" that "their hopes were more than realized." The constable then goes on to proclaim that he had found a large number of incendiary pamphlets, 150 or 160. Then ensued an excitement, and a cry was at once heard, "carry him across the street and hang him to the tree!" Such was the origin of the excitement which pervaded our community, and which the District Attorney lays to the charge of the traverser.

The testimony was silent as to any act of publication by the traverser of more than one of the publications referred to in the indictment, and in that he was shown to have had no improper design. We were told, however, that the possession was proof of criminal design. Was it to be endured that, without authority of law, and contrary to all law, private papers should thus be wrested from the possession of an individual, and then be offered as a proof of malicious intent and malicious publication? In any prosecution for a libel it was necessary to prove a malicious publication. Malice may be inferred to an individual from the simple act of publication. But in cases of seditious libel, it was necessary, in order to infer malice, to prove that the publication was made to such persons as that the public could be injured by it. His case being destitute of such proof, the traverser was entitled to a verdict in his favor. Mr. Coxe went into a minute examination of the testimony to prove that the pamphlets were brought innocently and without intent to circulate them. Those in the box were brought with other papers, and were packed by a lady, for the purpose of wrappers, &c., for plants. The pamphlets given to him in New York, by a person from whom he had purchased a book, he had received without any knowledge of their contents, and the package remained unopened in his trunk until it was taken by the constables. No mischief had been produced; no insurrection raised; no human being injured, except the



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unfortunate traverser himself, whom, after an incarceration of eight months, the prosecutor wishes you still further to punish. This was a reproach to our community; a burlesque of our courts of justice; it had no support in principle or reason. Was this the boasted intelligence, spirit, and generosity of the South!

From a review of the testimony it would be found that the traverser came into possession of the papers innocently; that he retained them innocently; and that they were never distributed by him.

Mr. Coxe then proceeded to maintain, at length, that, granting the publication, there was nothing in the quotations from the pamphlets incorporated in the indictment from which a criminal intent could be inferred. If there was no criminal matter in the extracts, then there was no crime charged. He went on to prove that they did not contain a single sentiment or expression on the subject of slavery, and its political, moral, and social results, which had not also been used by slaveholders; by the statesmen, and lawyers, and writers of the South.

Mr. Coxe proceeded to compare the language charged as seditious in the indictment, with passages from colonization speeches made by Mr. Key himself; by Mr. Archer, Mr. Custis, Bishop Smith, General Harper; by Patrick Henry, in the Virginia Convention; Mr. Pinckney, in the Legislature of New York; by Mr. Jefferson, in his notes on Virginia; by Judge Tucker, in his notes to Blackstone's Commentaries; and by other distinguished gentlemen at the South.

Neither he, nor the jury, nor the District Attorney, could distinguish the language and sentiment of one of those parties from the other. If there was any difference it was in this, that the northern publications were somewhat more temperate than the others. The controversy which had grown up between the rival Societies for Colonization and Abolition had given birth to this excitement. Which of them was right, or whether they were both right or wrong, was not now a matter in issue; but he would allude to the fact that the

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sincerity and personal excellence of the abolitionists had been warmly acknowledged by the amiable Secretary of the Colonization Society, and by one of its most distinguished members and friends, Mr. Gerrit Smith.

But the District Attorney denounced the Abolition Societies and Dr. Crandall, whom he alleged to be a member of the American Abolition Society. This assertion was unsupported by testimony, and untrue in fact. One of the constables, indeed, had testified that Crandall, after his arrest, admitted that he was a member of that society; but this was disproved by all the other testimony in the case.

Mr. Coxe, without defending the Abolition Societies, here undertook to prove, from various documentary evidence, that there was, after all, but very little difference between the sentiments and objects of the colonizationists and the abolitionists.

In conclusion, Mr. Coxe remarked, that if any the smallest injury had resulted from the traverser's sojourn in this District, it was not his fault. He was innocently occupied in professional pursuits, and was quietly pursuing the even tenor of his way. Whatever excitement and injury had grown out of his visit here was solely attributable to the illegal course taken by the prosecutor in procuring his arrest and the seizure of his papers, which were harmlessly reposing in his trunk.

With these remarks, and his thanks for the patient hearing afforded him by the jury, Mr. Coxe submitted the case, with entire confidence, to their hands.

*Mr. F. S. Key.* I consider this one of the most important cases ever tried here; I wish the prisoner every advantage of a fair trial. It is a case to try the question, whether our institutions have any means of legal defence against a set of men of most horrid principles, whose means of attack upon us are insurrection, tumult, and violence. The traverser defends himself by justifying the libels. We are told that they are harmless—that they have no tendency to produce the horrid results which we deprecate. We have been told that *this* community has not been endangered. The Emancipator has been read, the extracts from it

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justified, this prosecution scouted. If such publications are justifiable, then are we, indeed, at the tender mercy of the Abolitionist, and the sooner we make terms of capitulation with him the better. What does he propose for the slave? Immediate emancipation. In one instant the chains of the slave must snap asunder. Without delay, and without preparation, he becomes a citizen, a legislator, goes to the polls, and appoints *our* rulers. If this be the plan, then am I ready, as the opposite counsel expresses it, to seek refuge in other parts of the United States. Are you willing, gentlemen, to abandon your country; to permit it to be taken from you, and occupied by the Abolitionist, according to whose taste it is to associate and amalgamate with the negro? Or, gentlemen, on the other hand, are there laws in this community to defend you from the immediate Abolitionist, who would open upon you the floodgates of such extensive wickedness and mischief? There are such laws, gentlemen; they are as essential to your prosperity and peace as is the sacred law of self-defence to every individual.

But you have heard it denied that there are such laws; that these pamphlets are incendiary; and this prosecution is likened to those under the sedition law—a law reprobated and repealed—and hence we may infer that a man may publish what he pleases, however seditious and insurrectionary it may be. Not so. The repeal of the sedition law left the common law, by which these offences always were punishable, in full force; and, gentlemen, it is well known that the principal argument against the sedition law was, that the offences which it punished were sufficiently provided for already by the common law as it stood. But the traverser is not content with acting merely on the defensive. It appears that he is a *persecuted innocent man*; upon an illegal warrant, without proper evidence, attacked, *robbed*, put in jail; all for having a few harmless publications about him. Why does not this *persecuted* man bring his action for false imprisonment? Why do not his counsel advise it? The warrant was issued upon probable cause on oath. 47 The magistrate was bound to issue it, but it made the constable the judge of what were incendiary papers! Yes! and had the constable have taken any other course he would have been responsible to the traverser for so doing. But carry out the

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law as expounded on the other side. Here's a counterfeiter caught, with his tools, plates, &c., all found upon a search for stolen goods. The gentleman would bring him before a magistrate, have the warrant quashed, his *goods* returned to him, and should the articles, thus found, be used in evidence against him, it would be horrid, tyrannical, oppressive, shocking, and enough to make a man runaway from a country where there are such laws, and find refuge in some other. Gentlemen, if in searching for stolen goods you find evidence of counterfeiting, you may use it for the purpose of convicting the culprit of either offence.

But the papers were safe in Dr. Crandall's trunk. Yes, all were there and safe, but those taken out and circulated, exactly as the case would have been had they been counterfeit bank notes, and not incendiary pamphlets. Gentlemen, did he not give Mr. King one, because he thought that he *would not* mention it? And, gentlemen, would he not as likely give to those who *could not* tell? At every step in our community, he meets such men; he is enjoined in the language of these papers, to give them currency “in highways and by-ways.” This man should be glad of the opportunity, by public trial, to exonerate himself from the charges against him. They are distinctly made—the testimony clearly laid down—testimony, in my opinion, ample for his conviction. There are two questions in this case: are the libels charged criminal?—are they proved to have been published by the traverser? I call your attention to the libels and to their tendency. The Colonization Society published them only to denounce them. The Colonization Society only contemplates free negroes, and has nothing to do with slavery.

Mr. Key here explained the difference between the papers read by the traverser's counsel and those charged in the indictment, and showed that the Kentucky synod, the grand jury of our District, &c. were for gradual emancipation by the whites, and not violence by the blacks, &c. He thought having a number of these printed libels stronger proof against the traverser than having only one written; commented upon these papers coming through the post office with only one cent postage, as strong evidence that they were sent in here; upon the fact that none of his witnesses testified to his character or pursuits within the last

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two years; upon the improbability of such a man as Crandall was represented to be, of high character as a man and a physician, leaving Peekskill to go botanizing merely. Mr. K. here commented upon the inflammatory character of the libel alluding to the *colonial*, and, as he contended, the *general* system of slavery. Mr. K. here read again from the pamphlet, and then added: I am accused of being emphatic; I confess my blood boils when I read the closing sentence of this libel—this taunting us with the torch of the negro at our threshold, and his knife at our throats—this fiendish allusion to the *beauty* and chivalry of the South; it displays cool and demoniac malignity! Mr. K. then alluded to the pictures, saying that they could be meant only for the illiterate, and tended only to insurrection and violence. Mr K. animadverted upon the speeches and opinions of eminent Southern men, quoted by the traverser's 48 counsel, to show that their objects were different from those of the abolitionists. Mr. Key remarked, with great severity, on the abstract proposition of the sinfulness of slavery, and the declaration in the libels of the "South being awakened from their snoring by the thunder of the Southampton massacre." He contended that Crandall admitted, in his examinations at the jail, that all the papers he had were sent from New York, and came in a box; and said nothing about having received two parcels; and that he also admitted, that he had all the papers sent, but twelve or thirteen, and argued that those twelve or thirteen were circulated here, amongst improper persons: that if otherwise, the traverser might and could prove to him, to whom they were delivered.

He adverted to the slander contained in the libels, that a free person of color might be sold here for jail fees when apprehended as a runaway slave. He commented on the evidence of Mr. Austin, and argued that it was far from showing that the packages were not broken by Dr. Crandall, and part of them taken out and distributed. He also argued that Dr. Crandall took no pains to have the pamphlet returned to him, which he delivered to Mr. King, and did not destroy those he had after hearing that there was an excitement on the subject, and that none of these libels and picture books were used by him, as the other newspapers were, to preserve his plants, thereby proving his disposition to preserve and circulate them. Mr. Key also referred, in corroboration of what C.'s views

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were, to his declarationsto Jeffer's favorable to the amalgamation of the blacks and whites, and also those to Colclazier and Tippet, "that slavery brought the slaveholder and slave into promiscuous sensual intercourse," "and that he was willing that the North and the South should be arrayed against each other." Mr. Key added: This is a subject to us not of indifference. It has been one of much excitement, and we are bound to act in self-defence. If in your conscience, gentlemen, you think the traverser innocent, acquit him. Judge of these libels—the words—the meaning—the tendency—read their endorsement "please read and circulate" in the traverser's handwriting—look at these pictures!—hear his admission, "I gave them to a man who I thought would not tell on me." There are twelve or thirteen of them brought here by him unaccounted for; hear his prevarications in the jail and elsewhere: and if he is an innocent man, cruelly imprisoned under an illegal warrant, and these vile, calumniatory libels, are actually this *innocent, persecuted* gentlemen's *property—stolen* from him—then gentlemen return him his property and let him go free. It is with you, gentlemen; I ask of you but to do your conscientious duty.

The jury retired, and, after a short deliberation, agreed upon a verdict of NOT GUILTY. After which they separated, and returned their verdict into Court the next morning.